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No. 2413

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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EDWIN F. MEYER and EMAR GOLDBERG,  
Plaintiffs in Error,  
VS.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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VOLUME II.  
(Pages 353 to 704, Inclusive.)

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Upon Writ of Error to the United States District Court  
of the Western District of Washington,  
Northern Division.

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(Testimony of W. G. Johnson.)

Q. The question was not limited to Seattle, though?

A. He didn't specify five thousand pounds.

Q. The question Mr. Riddell asked you was this: If you could have delivered the five thousand pounds, in fifteen days, and you replied, "No." Now, I understand you don't mean to say to the jury, if you had received the award, or had bid for five thousand pounds of zinc, and the award had been made to you, you know you could have telephoned east, or to San Francisco, and if the zinc had been either place, received it within fifteen days?

A. Yes, sir, I could in five thousand pound quantity.

Q. You mean you couldn't have received it in the local market?      A. Not in the local market.

Q. That is, you didn't know where you could find it in the local market, that is what you mean to say?

(No answer.)

Q. You didn't answer the last question.

A. Well, if it had been in the local market, I would know where to find it.

Q. If somebody had had five thousand pounds here, and they were willing to have sold it to you, then you could have bought it?      A. Yes, sir.

Q. Then you could have delivered it? My point is directed especially to the delivery in fifteen days.

[325—274]

On redirect examination by Mr. RIDDELL the said witness testified as follows:

Q. Do you mean you couldn't have delivered it within five days, because there wasn't fifty thousand

(Testimony of W. G. Johnson.)

pounds in town? A. Yes, sir.

Q. You know that, do you?

A. As far as we would find out, there wasn't fifty thousand pounds in town.

W. G. JOHNSON, recalled as a witness on behalf of the plaintiff, further testified as follows:

(By Mr. RIDDELL.)

Mr. RIDDELL.—In matters of this kind, Mr. Johnson, what was the amount of a quantity of 50,000 pounds of  $\frac{1}{2}$  by 6 by 12 zinc, what was the difference between the wholesale price and the market price, approximately?

Mr. SCHLESINGER.—One moment, your Honor, please. It hasn't been shown this witness has ever dealt, or rather his employer, in 50,000 lots. Another thing, it should be confined to the particular time, and he must be shown to be familiar with the conditions governing the sale or purchase of zinc at that particular time, especially in a case where prices fluctuate.

The COURT.—Get your objection in the record. Have you objected yet?

Mr. SCHLESINGER.—Yes, your Honor.

The COURT.—Let him say whether he knows.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Do you know what the retail price, what the raise [326—275] over the wholesale price the retail price was on a bid for 50,000 pounds of zinc on or about the first day of April, 1908?

A. No, I don't at that time. I don't know what

(Testimony of W. G. Johnson.)

the cost of zinc was at that time.

Q. I didn't ask you that, I asked you if you knew what the bid, what the price would have been over the—the difference between the wholesale price and the retail price at that time.

Mr. SCHLESINGER.—I submit, your Honor please, he has already answered that question.

The COURT.—I think the witness must show he knows what the wholesale and retail price was before he can testify to the jury intelligently as to the profit.

Mr. RIDDELL.—Well, I am asking him, your Honor, if he knows the difference between the two. Now, I will connect that up and show what the whole-sale price was at that time by a witness who was in that business. This man was in the retail business at that time.

The COURT.—If he don't know, why, of course, he can't tell.

Mr. RIDDELL.—Do you know?

A. I know what the profit would be on the transaction.

Q. I will ask you what that profit was.

Mr. SCHLESINGER.—Now, if your Honor please, does the question call for his probable profits or the probable profit of a factory in Illinois, or Schwabacher's profit? Why, I submit it is not a proper question, clearly objectionable, and we do object to it on the ground it is not binding upon the defendant. He said he didn't know conditions.

The COURT.—The question seems to elicit his profit, or profit of his firm. What do you generally



(Testimony of W. G. Johnson.)

recognize the profit of the community, or the city, would be, is another matter.

Mr. SCHLESINGER.—At that time. [327—276]

Mr. RIDDELL.—That is it. Answer that question.

A. Be about a cent a pound.

Q. Be about a cent a pound? A. Yes, sir.

Mr. RIDDELL.—You may take the witness.

(By Mr. SCHLESINGER.)

Q. Had you sold any zinc at that time, or about that time, in 5,000 pound lots?

A. I had sold a shipment to the yard at that time, yes.

Q. Did you regard 12 cents a pound as a reasonable figure at that time?

A. Basing it on that—on what we paid for it, it was.

Mr. SCHLESINGER.—That is all.

[**Testimony of F. D. Stewart, for Plaintiff  
(Recalled).**]

F. D. STEWART, recalled as a witness on behalf of the plaintiff, further testified as follows:

(By Mr. RIDDELL.)

Q. You were asked concerning this bid. Do you recall this particular transaction (handing paper to witness)?

A. Why, no, sir, not that particular transaction. I know there was something peculiar about it. I didn't fill in the bottom part of the bid here (showing), the exact days time delivery.

Q. You did not fill that in? A. No, sir.

(Testimony of F. D. Stewart.)

Q. And so you say you know there is something wrong with it?

A. I know there is something wrong with it, yes, sir.

Mr. RIDDELL.—You may take the witness.

Mr. SCHLESINGER.—That is all. There is no further questions. [328—277]

**[Testimony of I. B. Hoopes, for Plaintiff.]**

I. B. HOOPES, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. RIDDELL.—My full name is Isaac D. Hoopes. I live at Menett, Washington. I am occupied in the navy yard, manufacturing department at present. I know the defendant Goldberg. I worked for the Great Western Smelting & Refining Company in Seattle; about five years ago, I left them; I was there about a year. I left them in the early part of 1908, about the first of May, I think it was.

Q. While you were there did Mr. Corder keep any of his materials in the warehouse of the Great Western Smelting & Refining Company?

Mr. VANDERVEER.—Object as not material, if the Court please.

The COURT.—He may answer. Note an exception.

A. Yes, sir, there was some there.

Q. What were those materials?

Mr. SCHLESINGER.—We object upon the

(Testimony of I. B. Hoopes.)

ground it is immaterial, incompetent and irrelevant, nothing to do with the issues here.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—And prior to the first of April, 1908?

Mr. SCHLESINGER.—Too remote in point of time.

The COURT.—Proceed.

A. Zinc plate, I guess they call it.

Mr. RIDDELL.—Zinc plate?

A. Yes, sir.

Q. Where was it kept, Mr. Hoopes?

A. In the warehouse, outside the office.

Q. What else, if anything, did Mr. Corder keep there? [329—278]

A. I don't know that he kept anything else.

Q. That is the only thing you knew of his keeping there? A. Yes, sir.

Q. Do you know whether he did or did not keep anything else there?

A. Not to my knowledge, no, sir.

Q. How often were you in the warehouse during your employment there?

A. That is pretty hard to say. I went in and out. Sometimes when I had nothing else to do I would go out there and see some of the men; sometimes I had to go out and see about orders; not frequently.

Q. Do you know to who any of that zinc was sold?

A. Well, I think they sold some to the navy yard.

Mr. MORRIS.—You were asked if you knew.



(Testimony of I. B. Hoopes.)

You can answer that first yes or no.

A. Pardon me. Yes, I think so.

Mr. RIDDELL.—You know. Well, all right, now say to whom it was sold?

A. To the navy yard, and they jobbed it out to others in small lots, of course. I don't remember to whom particularly.

Q. You say they did. Who do you mean by they?

A. Well, the house, the Great Western sold it.

Q. You mean they sold Mr. Corder's zinc?

A. I mean that all that went out from there on Great Western orders, went out that way.

Q. What I mean—am I misunderstanding you? Do I understand you that Mr. Corder's zinc went out on Great Western orders?

A. I am not sure about that.

Q. Do you know where Mr. Corder's zinc went to?

A. No. His zinc wasn't marked from any other zinc.

Q. How do you mean?

A. There was no distinguishing mark between his—

Mr. SCHLESINGER.—Did you say his, Corder's, zinc was not marked [330—279] by distinguishing marks?

A. Yes, sir, not to my knowledge.

Mr. RIDDELL.—It was not marked to distinguish it. Was it all put together?

A. Yes, sir.

Q. Well, now, Mr. Hoopes, after that zinc was put

(Testimony of I. B. Hoopes.)

together was it possible to tell which was Corder's and which was the Great Western's?

A. Only from the book, how much had been sold by the Great Western.

Q. What position did you occupy down there, Mr. Hoopes?

A. I was clerk, stenographer and bookkeeper, and general clerk.

Q. In that position did you acquire any knowledge of the transactions relating to this zinc?

A. I don't know—I don't understand what you mean by that.

Q. Well, in your office down there you were employed as a clerk? A. Yes, sir.

Q. Now, as a clerk down there did you learn anything about when this zinc was bought and who bought it and how it was paid for, and where it went to, and so on?

Mr. SCHLESINGER.—It seems to me, your Honor, that the records which are now before these gentlemen certainly must be regarded as the best evidence, and are the best evidence, records of the books here.

The COURT.—If he knows he can tell.

Mr. SCHLESINGER.—Exception.

A. Well, I could only—I don't know whether I could answer.

Mr. RIDDELL.—Do you remember when any of this zinc was bought?

A. No, not definitely. There was more than one purchase made while I was there.



(Testimony of I. B. Hoopes.)

Q. Do you remember whether anybody besides the Great Western Smelting & Refining Company paid for any part of that purchase? [331—280]

Mr. SCHLESINGER.—Well, I object to that as being absolutely immaterial. We may as well concede now that they paid for all of it and re-sold half of it to one of the defendants, which they have the legal and moral right to do.

Mr. RIDDELL.—I don't think they did just exactly what they had exactly the legal and moral right to do.

The COURT.—If he knows he can say so.

Mr. RIDDELL.—I will put it this way in leading form.

Q. Did Mr. Corder pay for any of that zinc?

Mr. SCHLESINGER. I object to that as absolutely immaterial, incompetent and irrelevant, whether he paid for it or didn't pay for it. He might have bought it on credit and subsequently paid for it.

Mr. SCHLESINGER.—I suppose it refers to the original purchase in the east?

Mr. RIDDELL.—Yes, sir.

Mr. SCHLESINGER.—We renew our objection as absolutely immaterial.

The COURT.—If the witness personally knows he can tell.

Mr. SCHLESINGER.—The point of my objection, your Honor please, is it is immaterial whether Mr. Corder bought this from the eastern factory or

(Testimony of I. B. Hoopes.)

whether he bought one-half from the Great Western Smelting Company.

The COURT.—Sure, I understand your position, and let an exception be noted, and he may answer if he knows.

A. Yes, sir, Mr. Corder paid for half a car.

Mr. RIDDELL.—Paid for half a car?

A. Yes, sir.

Q. Now, to whom was that half carload sold? I will put it this way: Was any of that carload sold to the navy yard?

A. Yes, I presume that went out of that load, out of that car. I [332—281] don't know definitely; I can't say definitely just what car, although they always carried some stock.

Mr. RIDDELL.—I offer these for identification, please.

(Papers referred to marked Plaintiff's Exhibit "21" for identification.)

Q. I show you Plaintiff's Exhibit "21" for identification. Do you know whose are those signatures on those checks?

A. Mr. Goldberg's signatures.

Q. That is Mr. Goldberg, this defendant?

A. Yes, sir.

Mr. RIDDELL.—We offer those checks in evidence as Plaintiff's Exhibit "21."

Mr. SCHLESINGER.—What is the purpose of the offer?

Mr. RIDDELL.—Those are the checks paying for the zinc and getting it back again.

(Testimony of I. B. Hoopes.)

Mr. SCHLESINGER.—Paying for the zinc and getting the zinc back again?

Mr. RIDDELL.—Paying for the zinc and the proceeds of the sale to the navy yard.

Mr. SCHLESINGER.—Oh. What are these two checks here, proceeds of sale, Mr. Riddell (showing)? Step over here a moment. I think you included too many.

Mr. RIDDELL.—Let the record show, your Honor, that we have had two checks, checks number 4973 and 4972 marked for identification as Plaintiff's Exhibit "21," and these other two I will offer.

The COURT.—4972—

Mr. RIDDELL.—Checks number 4972 and 4973 are marked for identification as Plaintiff's Exhibit "21." I will withdraw the former offer.

Mr. SCHLESINGER.—Here is another one now.

Mr. RIDDELL.—These two checks are both dated June 1st, 1908, [333—282] one to E. Goldberg and the other to Emar Goldberg.

Mr. SCHLESINGER.—And signed by Great Western Smelting Company?

Mr. RIDDELL.—And signed by Great Western Smelting & Refining Company by Emar Goldberg.

Mr. SCHLESINGER.—Yes, sir.

Mr. RIDDELL.—Now, two checks, one of May 15, 1908, number 4946 to the Star Steamship Company, in the sum of \$246.15, and the other dated June 2d, 1908, number 4978, to W. A. Corder Company, in the sum of \$4974.31, which has been identified by the witness. We offer those in evidence as Plain-



(Testimony of I. B. Hoopes.)

tiff's Exhibit "23." Mark those two.

(Papers referred to marked Plaintiff's Exhibit "22" for identification.)

Mr. SCHLESINGER.—That shows that check was paid, does it not, Mr. Riddell?

The COURT.—Exhibit "22" and "23."

Mr. RIDDELL.—As exhibit "23."

Q. I show you three papers which have been pinned together and marked for identification Plaintiff's Exhibit "22." Do you know what those papers are?

Mr. MORRIS.—Plaintiff's Exhibit "23" is what?

Mr. RIDDELL.—Is the two checks, one paying for half of the freight and the other paying Corder Company half of the proceeds.

Mr. MORRIS.—Arising from the sale?

Mr. RIDDELL.—Yes, sir, arising from the sale.

A. Yes, sir.

Q. What are they?

A. They are ledger sheets from the Great Western.

Q. Ledger sheets from the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Who kept them? [334—283]

A. I did part of the time.

Q. Who was the manager at that time?

A. Mr. Goldberg.

Q. And you kept it under his direction?

A. Yes, sir.

Mr. RIDDELL.—Now, we offer this in evidence as Plaintiff's Exhibit "22."

(Testimony of I. B. Hoopes.)

The COURT.—What are those?

A. Those are ledger sheets from the Great Western Smelting & Refining Company.

Mr. SCHLESINGER.—What number, Mr. Riddell?

Mr. RIDDELL.—“22.”

The COURT.—Any objection?

Mr. MORRIS.—Well, give us a little time, will you please? Perhaps we won't object if you explain to us the purpose of it.

Mr. RIDDELL.—I am just going to have this identified and add it to Plaintiff's Exhibit “22.”

Q. Can you identify that (handing another paper to witness)?

A. Yes, sir, that is another sheet from the Great Western's ledger.

Mr. RIDDELL.—I will just ask to add this to “22.” Mark this Plaintiff's Exhibit “24” for identification. (Papers referred to marked Plaintiff's Exhibit “24” for identification.)

Q. I show you paper marked for identification Plaintiff's Exhibit “24.” Do you recognize the signature on that?

A. Yes, sir, that is Mr. Goldberg's.

Q. Defendant Goldberg's signature.

The COURT.—What is that?

Mr. RIDDELL.—It is a check. I didn't want to identify it until it was admitted in evidence. I just wanted to have it marked for identification. [335—284]

The COURT.—Well, I wanted to get it.

(Testimony of I. B. Hoopes.)

Mr. RIDDELL.—Well, I will read it, if you care for it. Now, I understand that Plaintiff's Exhibit "23" has been admitted without objection.

Mr. SCHLESINGER.—This one check here, Mr. Riddell, this 43 check?

Mr. RIDDELL.—Plaintiff's Exhibit "22," your Honor, I had just three papers and added one more to it. Counsel, I think, has no objection to the introduction of the three papers. One of the papers they will hold out for a moment, so that I will ask to have the one paper marked as Plaintiff's Exhibit "22" for identification and not offer it in evidence at this time, and plaintiff's exhibit—

The COURT.—You have four sheets as exhibit "22." You desire to withdraw one and have three sheets?

Mr. RIDDELL.—I desire to leave one as exhibit "22," because that particular one has already been marked as exhibit "22," and I will ask to have the other three marked Plaintiff's Exhibit "25," is it not?

The COURT.—Yes, sir.

Mr. RIDDELL.—Three sheets. There were four sheets in exhibit "22." The one remains as exhibit "22" for identification and is not offered in evidence as yet.

The other three are made exhibit "25" and now offered in evidence and received without objection.

The COURT.—Number "25" admitted. Proceed.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "25.")



(Testimony of I. B. Hoopes.)

(Plaintiff's identification "23" received in evidence and marked Plaintiff's Exhibit "23.")

Mr. RIDDELL.—I ask to have this book marked Plaintiff's Exhibit for identification "26."

(Book referred to marked Plaintiff's Exhibit "26" for identification.) [336—285]

The COURT.—What are those?

Mr. RIDDELL.—Book of invoices of the Great Western Smelting & Refining Company.

Q. I show you book and papers, which has been marked Plaintiff's Exhibit "26" for identification. Do you know what they are?

A. Yes, sir, they are copies of invoices.

Q. When you sent out an invoice what did you do?

A. We made three copies, I believe.

Q. Did you keep one copy? A. Yes, sir.

Q. And they became the records and files of your office? A. Yes, sir.

Q. And became your original office records of that transaction? A. Yes, sir.

Q. And this is that book? A. Yes, sir.

Mr. RIDDELL.—Mark this Plaintiff's Exhibit "27."

(Instruments referred to marked Plaintiff's Exhibit "27" for identification.)

Q. I have marked this for identification Plaintiff's Exhibit "27" and show you that. Do you know what that is? Well, I just ask you—that is a similar book to "26," is it not? A. Yes, sir.

Mr. RIDDELL.—I show you plaintiff's exhibit for identification "28."

(Testimony of I. B. Hoopes.)

The COURT.—What is that?

Mr. RIDDELL.—What is this?

A. It is the receiving-book.

Q. Sir? A. No, these are—

Mr. SCHLESINGER.—We can save time. [337—286] A. This is the sales book.

Mr. RIDDELL.—Of the Great Western?

A. Yes, sir.

Mr. SCHLESINGER.—Mr. Riddell, so as to expedite the matter, let us submit these books are the property of the Great Western Smelting Company, and that you had possession of them between two to three years, since March, 1911, in your possession.

Mr. RIDDELL.—I won't go back that far.

The COURT.—Just agree on what you want to go in this case.

Mr. SCHLESINGER.—May, 1911, is the admission, that right?

Mr. SHIPLEY.—Been in their possession since that date.

Mr. KERR.—They don't need to identify them by this witness; we will admit them; we gave them to them.

Mr. RIDDELL.—Very well.

(Instruments referred to received in evidence and marked Plaintiff's Exhibit "28.")

Mr. RIDDELL.—Your Honor, the matter which the Court took up early this afternoon, and that the Court does not intend to determine until to-morrow morning, offers a surprise to the Government, and we are hardly in a position to continue any further



(Testimony of I. B. Hoopes.)

at this time. We could identify these, but if counsel will admit them I think we can adjourn now and get together and have these things in here by to-morrow morning and start right fresh in the case, if that is satisfactory to the Court.

The COURT.—Will you get together and check over the records?

Mr. RIDDELL.—Yes, your Honor, and have them ready by to-morrow morning.

Mr. SCHLESINGER.—The trouble has been in this, we haven't our books; we are compelled to come here at unseemly hours and examine them. Mr. House has been very accommodating and has agreed to come [338—287] with us to-morrow evening and go over this matter with us.

The COURT.—I am willing to adjourn now if you will devote the balance of the day in getting these records in the order in which they ought to go in.

Mr. RIDDELL.—Yes, your Honor. We will fix that up.

I. B. HOOPES, on the stand.

Cross-examination.

(By Mr. VANDERVEER.)

Q. Mr. Hoopes, you were bookkeeper for the Great Western Smelting & Refining Company up to the 8th of May, 1908, I think you testified?

A. About that time; yes.

Q. And as such you were acquainted with the accounts prior to that time between that company and W. A. Corder Company?      A. Yes, sir.

(Testimony of I. B. Hoopes.)

Q. You made out the bills? A. Yes, sir.

Q. For the Great *Eastern* Smelting & Refining Company? A. Yes, sir.

Q. And the remittance from Mr. Corder came through your hands and were entered by you on the books, I presume?

A. I think they were; I presume they were, unless Mr. Goldberg got them personally.

Q. And then, in some instances, would he enter them on the books?

A. Yes, occasionally, but not frequently; usually called me to do it.

Q. It was your custom ordinarily to make those entries? A. Yes, sir.

Q. And for that perhaps you would usually see the bill or the check, or whatever papers pertained to the transaction? A. Yes, sir. [338½—288]

(Mr. Vanderveer looking for papers.)

Mr. RIDDELL.—While they are busy, Mr. Hoopes, I show you check-book, which has been marked for identification Plaintiff's Exhibit "29." Plaintiff's Exhibit "29," your Honor, is the check-book of the Great Western Smelting & Refining Company. Do you know what that is?

A. That is the Great Western's check-book, yes, sir.

Mr. RIDDELL.—With the canceled checks attached to the stub? A. Yes, sir.

Mr. RIDDELL.—Of the Great Western Smelting & Refining Company?

(Testimony of I. B. Hoopes.)

A. Yes, sir, Great Western Smelting & Refining Company.

Mr. RIDDELL.—During the time that you were employed for them?

A. I didn't notice the date, but—

Mr. RIDDELL.—It starts out— A. Yes.

Mr. RIDDELL.—It starts December 9th, 1907, check number 4375. A. Yes, sir.

Mr. SCHLESINGER.—Is that one of the check-books turned over to you by Mr. Goldberg about two years ago, Mr. Riddell?

Mr. RIDDELL.—I presume it is, Mr. Schlesinger. It runs to April 29th, 1908, check number 4869.

A. Yes, sir.

Mr. VANDERVEER.—I want to show you a package containing ten statements with canceled checks attached, and ask you to examine the statement particularly and tell whether they are typical of the statement that you rendered W. A. Corder on behalf of the Great Western Smelting & Refining Company.

The COURT.—Did you mark those?

Mr. VANDERVEER.—They were marked "F" for identification.

A. Yes, sir, these are typical statements. [339—289]

Q. Those appear to be original statements, receipted vouchers now, with checks attached.

A. One from Matheson & Heggler, I don't know anything about that.

Q. Well, I will withdraw that. I will ask you to withdraw one of these, and that will be nine left in



(Testimony of I. B. Hoopes.)

that exhibit. A. Otherwise they are.

Q. Those appear to be the original instruments?

A. Yes, sir.

Q. Originating in the office of the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Now, was it your custom, Mr. Hoopes, in billing Mr. Corder for the cost of material, or for freight, or other expenses incurred in handling material, to send him vouchers of the expenditures which the Great Western Smelting & Refining Company had made, or merely blank bills stating the amount?

A. Blank bills, as I recall it.

Q. And not vouchers? A. No, sir, I think not.

Q. For instance, if the Great Western Smelting & Refining Company had paid a certain amount of money for freight, it was not customary to send W. A. Corder & Company a copy of the company expense bill? A. I don't remember that we did.

Q. Do you know of any instances in which Mr. Corder came over and investigated these payments, or complained or objected to the bills you had sent him? A. No particular instance, no, sir.

Mr. SCHLESINGER.—What was the answer?  
[340—290]

A. He and Mr. Goldberg sometimes got together and adjusted the accounts.

Mr. VANDERVEER.—Went over their accounts and balanced them up from time to time?

A. Yes, sir. I didn't get in on that.

Q. But it wasn't necessary to voucher them, neither was it necessary for Mr. Corder to require it?

(Testimony of I. B. Hoopes.)

A. No, sir.

Q. Nor to require for a bill?      A. No, sir.

Q. And you sent the bill out, and in due course you received a check in return and receipted it and sent it to Mr. Corder?      A. Yes, sir.

Q. And these accountings for those transactions was generally handled through the mail?

A. I think so.

Q. And by you in person?

A. Well, Mr Goldberg opened all the mail, always opened the mail, and turned anything over to be entered in the book.

Q. You sent out the statement?      A. Yes, sir.

Q. And you usually receipted the bills?

A. Yes, sir.

Q. And you usually made the entries on the books?

A. Yes, sir.

Mr. VANDERVEER.—That is all. Now, we will offer these nine checks and receipts, which have been marked for identification Defendants' Exhibit "F."

Mr. SCHLESINGER.—No objection on the part of the Great Western.

The COURT.—Any objection on the part of the United States? [341—291]

Mr. ALLEN.—We haven't even had a chance to examine them.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I want to ask you a question, Mr. Hoopes. How long were you in the employ of the Great West-

(Testimony of I. B. Hoopes.)

ern Smelting Company?

A. About a year; I don't remember the date exactly.

Q. As a bookkeeper?

A. As general clerk, stenographer and bookkeeper.

Q. I am going to make an appeal on behalf of the reporters here. They are trying to get these questions and answers. You had access to all of the books of the concern, Mr. Hoopes?

A. Yes, sir, I believe so.

Q. And of all of the papers and vouchers and checks? A. Yes, sir.

Q. You conferred with Mr. Goldberg from time to time concerning the usual business of the concern? A. Yes.

Q. And you are now in the employ of the navy yard, are you not? A. Yes, sir.

Q. You have been there how long?

A. Two years and ten months.

Q. The Government knew that you had been in the employ of the Great Western Smelting Company? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

On redirect examination by Mr. RIDDELL the said witness testified as follows: [342—292]

Q. Mr. Hoopes, did you know whether or not the fact that you had been in the employ of the Great Western Smelting & Refining Company had anything to do with your obtaining your present position? A. Not to my knowledge, no, sir.



(Testimony of I. B. Hoopes.)

Mr. SCHLESINGER.—Mr. House, do you recall the date when you received this at the hands of either Mr. Kerr or Mr. Goldberg? (Exhibiting papers to Mr. House.)

Mr. HOUSE.—About the latter part of May, I guess.

Mr. SCHLESINGER.—Of what year, 1911?

Mr. HOUSE.—Yes, sir.

Mr. SCHLESINGER.—Subject to the objection which may be raised to items appearing on the document, we have no objection to it being admitted in evidence.

The COURT.—That is number—

Mr. RIDDELL.—Number “22.” It has been identified, your Honor. It is now admitted in evidence.

(Instrument referred to received in evidence and marked Plaintiff’s Exhibit “22.”)

Mr. RIDDELL.—Mr. Hoopes, all these checks bear the signature of whom (handing same to witness?) A. Emar Goldberg.

Q. The defendant in this case? A. Yes, sir.

Mr. RIDDELL.—Now, we offer in evidence checks forty-eight thirty-eight, dated April 21st, 1908, to the Dexter-Horton Bank, Matheson & Heggler, zinc car, in the amount of \$668.75.

The COURT.—Had that been marked?

Mr. RIDDELL.—It is a check, being one of the checks in plaintiff’s exhibit marked for identification “29.”

The COURT.—That hasn’t been marked, has it?

(Testimony of I. B. Hoopes.)

Has that book been [343—293] marked “29”?

Mr. ALLEN.—Yes, sir. It includes a thousand checks. We want this specially marked. Mark the check and stub “29-A,” then.

Mr. SCHLESINGER.—Mr. Riddell, you are familiar with both sides of this controversy, so won’t you please, before putting in a check, let us look over these before you introduce them?

Mr. ALLEN.—We offer check 4869, dated April 29th, 1908, to J. W. Allen, agent, car of zinc, I. C. 39,890, \$655.66, check and stub as Plaintiff’s Exhibit “29-B.”

(Papers referred to received in evidence and marked Plaintiff’s Exhibit “29-A” and “29-B,” respectively.)

Mr. RIDDELL.—Mr. Hoopes, do you recall any conversations that ever occurred between Mr. Goldberg and Mr. Corder relative to the supply of zinc in town?

Mr. SCHLESINGER.—Will you mention the time, please?

Mr. RIDDELL.—About this time?

A. I don’t remember any dates, but I have heard them speak of other firms being out of zinc; I don’t remember in what connection.

Q. Did they say who it was that had the only zinc in town?

A. Said that they had practically all there was.

Mr. RIDDELL.—Take the witness.

Mr. SCHLESINGER.—No further questions.  
[344—294]



[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. 2, pages 148 to 294. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Larkin, Deputy. [345]

**[Testimony of Miss Agnes Hanschild, for Plaintiff.]**

Miss AGNES HANSCHILD, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My name is Agnes Hanschild. I live at No. 7019 Third Avenue Northwest; between Ballard and Green Lake District. I have lived in the city about seven and a half years. My employment with the W. A. Corder Company in this city covered a period of two years in all. I was there at different times. I was there in the early part of April, 1908; left there the early part of April, 1909. I am not certain about the date when I came there; it was the early part of April. My particular duties were general office work; that included the duty of keeping the books of account of W. A. Corder & Company.

Q. I will ask you if you can identify any of these instruments which I hold in my hand. Look at them, Miss Hanschild; pull them out separately, if you will (handing papers to witness). Is that the signature of Mr. Corder (showing)?      A. Yes, sir.

Q. Is that the form of check, the kind of check

(Testimony of Miss Agnes Hanschild.)

you used in your office at that time? A. Yes, sir.

Q. Whose handwriting is this in the body of the check? A. Mr. Corder's.

Q. All his handwriting? A. Yes, sir.

Mr. ALLEN.—We ask this check number 1909, dated April 20th, 1908, drawn by W. A. Corder as manager of the W. A. Corder Company, and paid to the Great Western Refining Company, a check in the [346—295] sum of \$1334.37, marked Plaintiff's Exhibit "30," and now offered in evidence.

Mr. SCHLESINGER.—Does that bear the endorsement of Mr. Alper, the president of the concern?

Mr. ALLEN.—I will read the endorsements in a moment and let you see them.

Mr. SCHLESINGER.—Yes.

Mr. ALLEN.—We offer this, your Honor, having now been stamped as Plaintiff's Exhibit "30," we offer that in evidence, coupled with the explanation of Mr. House that it was taken from the files and records of the W. A. Corder Company, hereafter to be made.

Mr. VANDERVEER.—No objection as far as Mr. Corder is concerned.

Mr. SCHLESINGER.—We certainly haven't any.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "30.")

Mr. ALLEN.—Calling your attention, Miss Hanschild, to that check of date December—what is that? A. April 20th.

(Testimony of Miss Agnes Hanschild.)

Q. April 20th, 1908. You identify that signature at the bottom? A. Yes, sir.

Q. Whose signature is that? A. Mr. Corder's.

Q. Mr. Corder's signature. Whose writing is that in the body of the check? A. His also.

Q. That was the form of check in use at that time in his office? A. Yes, sir.

Mr. ALLEN.—Can you identify that sheet, Miss Hanschild? A. Yes, sir. [347—296]

Q. What is that? State to the jury.

A. Page taken from the ledger of W. A. Corder & Company.

Q. Whose account does it show?

Mr. ALLEN.—They can't hear, Miss Hanschild. She said it was a page taken from the account of W. A. Corder & Company.

A. The ledger of W. A. Corder & Company.

Q. Whose account is shown on that page?

A. Great Western Smelting & Refining Company.

Q. Who kept those figures and made the notations in there? Can you tell the jury where you begun, if at all? A. March 26th, 1908.

Q. Is it in your handwriting from March 26th, 1908, down.

Mr. VANDERVEER.—I admit all those things, made the admission a dozen times.

Mr. ALLEN.—You admit the items which they call for here?

Mr. VANDERVEER.—I admit the identity of the things and admit the facts they prove by them.

Mr. ALLEN.—This is your handwriting, part of



(Testimony of Miss Agnes Hanschild.)

it (showing)?      A. Part of it, yes, sir.

Mr. ALLEN.—And we offer that in evidence as plaintiff's exhibit.

Mr. VANDERVEER.—Mr. Allen, there is one point on which I reserve at all times to object, that is the materiality of it. I will admit the identity of any of these instruments and will admit, on the other hand, the facts you claim they prove, as far as they are material.

Mr. ALLEN.—Mark this Plaintiff's Exhibit "31." Any objection by counsel for the other defendants?

Mr. ALLEN.—I will ask you, Miss Hanschild, to take a look at that check which I just offered. Can you identify the signature on that check, Miss Hanschild? [348—297]

A. Yes, sir, Mr. Corder's.

Q. Mr. W. A. Corder. Whose handwriting is it?

A. The body of the check was made out by myself.

Q. Beg pardon?

A. The body of the check was made out by myself.

Q. By yourself.

Mr. ALLEN.—We offer for identification merely at this time this check, your Honor, the same being a check of June 1st, number 1978.

(Paper referred to marked Plaintiff's Exhibit "32" for identification.)

Mr. ALLEN.—Calling your attention to an item—

Mr. VANDERVEER.—As far as those items are concerned, I will admit the fact.

Mr. ALLEN.—Calling your attention to an item

(Testimony of Miss Agnes Hanschild.)

which is about midway down the page, in fact, in the—

Mr. KERR.—Mr. Allen, supposing you check those items, so when you put one in evidence we won't have to thresh over the entire amount of that account.

Mr. ALLEN.—Yes, it has been done. The fifteenth line, where the check mark is, being an item reading "April 30th, zinc, ditto, zinc," referring to folio 828, the sum of \$3,708.55. What does that mean as found in this place upon your ledger upon the account of the Great Western Smelting & Refining Company, taken from the books of W. A. Corder & Company? Tell the jury, you are a bookkeeper and they are not bookkeepers, tell them just what that means on there.

A. That was, according to this ledger sheet, there was a charge of zinc plate sold to Great Western Smelting & Refining Company.

Mr. SCHLESINGER.—That is, sold by Corder & Company?

A. Sold by Corder & Company to the Great Western Smelting & [349—298] Refining Company.

Mr. ALLEN.—That bears date of April 30th, as it appears on the ledger. Now, calling your attention to the other items on the other side of the ledger. What is the amount of that where it is marked with an "X"? A. \$4,974.31.

Q. \$4,974.31. What do those figures mean there (showing), "C-24"?

A. Posted from cash-book.

(Testimony of Miss Agnes Hanschild.)

Q. What do the figures, the letters, out to the right indicate, what is that? A. On June 2d.

Q. That is the date? A. Yes, sir.

Q. That is the date, then, that you passed to the credit of the Great Western a remittance from the Great Western to the Corder Company, is that right of the sum of four thousand and some odd dollars?

A. Yes, sir.

Q. I see. You personally don't know whether you handled these checks or not? Do you remember, do you have any recollection in the matter; do you have a recollection of handling these particular checks as they came through your hands?

A. I must have handled them in order to get a balance.

Mr. SCHLESINGER.—I didn't get your answer, Miss Hanschild.

A. I must have handled them in order to get a balance of the books.

Mr. SCHLESINGER.—In order to get a balance?

A. Yes, sir.

Mr. ALLEN.—Any objection?

Mr. SCHLESINGER.—If I understand you rightly, Mr. Allen, this comes from Mr. Corder's book?

Mr. ALLEN.—That is exactly right.

Mr. SCHLESINGER.—Has been in the custody of Mr. House for [350—299] about two years?

Mr. ALLEN.—That is right.

Mr. SCHLESINGER.—And is unchanged?

Mr. ALLEN.—Mr. House—I will ask him now.



(Testimony of Miss Agnes Hanschild.)

Mr. HOUSE, these records have not been changed, and they have been in your custody?

Mr. HOUSE.—Yes, sir.

Mr. ALLEN.—You will testify to that later?

Mr. HOUSE.—Yes, sir.

Mr. ALLEN.—There is no objection, then, to this Plaintiff's Exhibit "31" being admitted, sheet from the books of W. A. Corder, their ledger sheets. The items referred to are the debit on this side and this here (showing).

(Papers referred to received in evidence and marked Plaintiff's Exhibit "31.")

Mr. ALLEN.—I will call your attention to this rather cumbersome, heavy book I am carrying around here. Do you recognize that, Miss Hanschild? A. Yes, sir.

Q. Has that page been identified (showing)?

Mr. RIDDELL.—No, but the book has. You can identify it exhibit so and so in plaintiff's identification.

Mr. ALLEN.—We will offer this particular page. Will you mark that page?

(Page referred to marked Plaintiff's Exhibit "33" for identification.)

Q. Again calling your attention to this page from the ledger, Miss Hanschild, this is the ledger of the W. A. Corder & Company and shows what account in that ledger, Miss Hanschild?

A. This is the order file.

Q. In the order file of the company. This account,

(Testimony of Miss Agnes Hanschild.)

does that show—or to whose account does that refer? [351—300]

A. Great Western Smelting & Refining Company.

Mr. ALLEN.—Explain to the jury exactly any notations that may be on there, and just exactly what they mean. Read that written—any of these figures (showing). What do these letters mean (showing)?

Mr. VANDERVEER.—Any letters we wouldn't understand.

A. Order number T. E. G., which I presume means Mr. Goldberg, for one-half your fees—

A. Order number T. E. G., which I think would mean Mr. Goldberg's name, one-half new invoice to navy, 1½ by 6 by 12 zinc, \$3,708.55.

Q. Does that now refer to that same ledger charge that we were just referring to?

A. Yes, sir; this was posted into the ledger on April 30th.

Q. So that charge against the Great Western would appear on that ledger sheet. We offer that in evidence, your Honor.

Mr. VANDERVEER.—No objection.

Mr. SCHLESINGER.—There is no objection, Mr. Allen, to that.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "33.")

Mr. ALLEN.—Miss Hanschild, I call your attention to what purports to be a cash-book. Kindly identify that for the Court and jury, if you can do so.



(Testimony of Miss Agnes Hanschild.)

What book is that; where does it come from—what book is that?

A. Cash-book of W. A. Corder & Company.

Mr. VANDERVEER.—Nothing else in this order-book you want?

Mr. ALLEN.—Not that I know of at this time.

Q. This was his book in use down there at the time you were employed by the company, was it?

A. It was; yes, sir.

Q. I call your attention to certain specific—I want this book [352—301] marked for identification as Plaintiff's Exhibit "34."

(Book referred to marked Plaintiff's Exhibit "34" for identification.)

Q. Calling your attention to the third item from the bottom, I will ask you to tell me about that entry there. Is that in your handwriting? A. It is.

Q. Read it to the jury.

A. On April 20th, Great Western Smelting & Refining Company—

Q. Under what head do you find it?

A. Under merchandise.

Q. You identify the other above as also your handwriting? A. Yes, sir.

Q. But the sum \$1,334.37 is under the head of merchandise. Now, take a look at page 35. The other was on page 27. Take a look at page 35. Calling your attention to the second—well, on page 35 to the second item on that page, both on page 34 and page 35, the second item. Do you recall, is that your handwriting? A. It is.

(Testimony of Miss Agnes Hanschild.)

Q. Well, read each of those items, one on page 34—

A. That is the credit entry on the ledger.

Mr. ALLEN.—All those entries were in your own handwriting?      A. Yes, sir.

Q. That is the cash-book of W. A. Corder Company, no number given, but shows entries for the year 1908. This is plaintiff's exhibit for identification number "34." Miss Hanschild, while you were in the employ of this company during this time you had an opportunity to observe the relations between Mr. Corder and Mr. Goldberg, did you not?

A. I saw Mr. Goldberg in the office occasionally.  
[353—302]

Q. What were their relations, friendly or otherwise?

Mr. SCHLESINGER.—We admit they were friendly at times.

Mr. ALLEN.—Close business relations, were they not, Miss Hanschild?      A. Apparently, yes, sir.

Q. I will ask you whether or not you recall a singular circumstance of the employer by whom you were employed making any social excursions with the negro, Mr. Meyer, the defendant?

Mr. VANDERVEER.—I object to the question, if the Court please, as leading, and making an unnecessary comment on the circumstance referred to.

Mr. SCHLESINGER.—My objection goes, your Honor please, to the reference to the man's color.

The COURT.—I think that might be eliminated and stricken from the question.

Mr. ALLEN.—Well, I withdraw it, except for the

(Testimony of Miss Agnes Hanschild.)

purpose of identification.

Mr. SHIPLEY.—Identify him without that in the presence of the jury.

Mr. ALLEN.—I don't know whether you know Meyer, the defendant, or not. Do you, as a matter of fact, do you know this man sitting over here by the water cooler; can you identify that man?

A. I have seen him in the office once or twice.

Q. You have seen him in the office once or twice. Do you recall any circumstance in connection with that man and Mr. Corder with reference to their being in contact on any occasion, or going anywhere on any occasion in a social way, and what was the circumstance of that fact?

Mr. VANDERVEER.—It is immaterial and irrelevant for any purpose.

The COURT.—Let her answer.

Mr. VANDERVEER.—Note an exception. [354—303]

The COURT.—Exception noted.

A. I do recall them going out together once.

Mr. ALLEN.—Take the witness.

On cross-examination the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Miss Hanschild, as I understand you, you were in the employ of the Corder Company as a bookkeeper? A. Bookkeeper and general office work.

Q. You are not now in the employ of the Government, are you, Miss Hanschild? A. I am not.



(Testimony of J. A. Kettlewell.)

Q. I am glad to know that. That is all. [355—304]

[Testimony of J. A. Kettlewell, for Plaintiff  
(Recalled—Cross-examination).]

J. A. KETTLEWELL, a witness on behalf of the plaintiff, recalled for continued cross-examination, testified as follows:

(By Mr. MORRIS.)

I was arrested on the 28th day of March, 1911.

Q. And between the time of your arrest and the time you entered your plea of guilty in this court, the charge that was laid against you by the Government in a transaction that pertained to the navy yard frauds, you disclosed to Mr. Hutson, the Deputy District Attorney, all of your connections and relations in a fraudulent matter with the United States Government through the Pay Office?

A. I could answer that yes, but I want to qualify it by saying that I answered the questions propounded by Mr. Hutson, but I didn't—there may be things that he didn't ask me about. I didn't volunteer any information at that time.

Q. You were asked, in substance, the same question on the former trial of this defendant Meyer in cause 2042; this cause *is* now being tried is 2039, and you may answer to that, "I furnished the Government all information concerning my own transactions," did you not?

A. Yes, I think that is the substance of what I said.

(Testimony of J. A. Kettlewell.)

Q. This conversation that you had with Mr. Hutson covered a period from the 28th day of March up until the Government succeeded in getting from you all the information you had to tell to them?

A. Why, I had frequent conversations with Mr. Hutson.

Q. I didn't ask you that question. Answer my question.

A. I wouldn't say that. As I said before, I answered all the questions that Mr. Hutson asked me. Whether that covered all the information that I had or not, I couldn't say that.

(Witness continuing.) The subject matter that was under discussion for the first ten [356—305] days after my arrest, or from the 28th of March, 1911, up until the middle of April, 1911, pertained to my crooked transactions in connection with the Pay Office. I gave a great deal of information to Mr. Hutson and other representatives of the Government pertaining to my transaction with the Pay Office—crooked transactions. I cannot say that I told them all. I gave Mr. Hutson all information concerning my own transactions with which I have been connected in connection with the Pay Office of an unlawful nature. There is no such firm, as far as I know, by the name of Lyman-Evans & Co.

Mr. ALLEN.—Your Honor, this is the first one of these same problems. The witness has already testified that there were a number of offenses. He has bared his soul here in that direction. Now, he is asking him as to a particular offense that comes

(Testimony of J. A. Kettlewell.)

within this definition of your Honor. I submit he could not be permitted to answer the question.

Mr. SCHLESINGER.—Under our theory we claim to be entitled to go into everything.

The COURT.—Mr. Kettlewell, is this one of the—

A. I don't know as to the time—

The COURT.—Is this one of the matters to which you referred? Will the answer to this tend to incriminate you?

A. I don't know—I would have to know the time in which this thing occurred.

Mr. SCHLESINGER.—It is barred, if your Honor please, as I understand it.

The COURT.—Objection sustained. I understand this is not a matter with which any of the defendants were connected or associated at all in any way.

Mr. MORRIS.—Why, it is a matter, may it please your Honor, that [357—306] was submitted—

The COURT.—No, you can answer my question. I asked you whether it is contended this is a matter in which some of the defendants in this case were associated or connected with the witness?

Mr. SCHLESINGER.—Your Honor, I want to simply state this: We shall be entitled to go into all of these transactions, because we shall show certain threats coming within certain conversations between this man upon the stand and Mr. Goldberg. So it is bound to appear in this courtroom before these twelve men, and they can't keep it out. It may as well come out now.



(Testimony of J. A. Kettlewell.)

The COURT.—Well, we will cross the bridges when we get to them. Proceed.

Mr. SCHLESINGER.—Note an exception to that.

The COURT.—Exception allowed.

Mr. MORRIS.—Your Honor will allow the defendants an exception?

The COURT.—Yes.

Mr. MORRIS.—Is it not a fact, Mr. Kettlewell—this is for the purpose of making the record, your Honor—that this Lyman-Evans transaction to which I just referred in my question occurred in the year 1908, latter part thereof?

A. I could not give any definite date unless I saw the folder. I could tell from that, is the only information that I have that I recollect now.

Mr. MORRIS.—Mr. House, will you kindly let me have the folder, the Lyman-Evans transaction?

The COURT.—Isn't there something else you can take up at this time?

Mr. MORRIS.—Your Honor's ruling has made it necessary for defendants at this time to make the record.

Mr. MORRIS.—Mr. Kettlewell, I now direct your attention to open purchase requisition No. 147, of series 1910, Naval [358—307] Supply Fund.

Mr. ALLEN.—That is the year, Mr. Morris?

Mr. MORRIS.—Yes, sir, series 1910, Naval Supply Fund. If there is any doubt—(exhibiting same to Mr. Allen).

Q. (Continuing.) Said requisition being the Gov-

(Testimony of J. A. Kettlewell.)

ernment's exhibits, being Plaintiff's Exhibit Number "102" in cause No. 2042.

Mr. ALLEN.—That the former trial of Meyer?

Mr. MORRIS.—The former trial of Meyer on that indictment 2042.

Q. I now hand you said exhibit and ask you to examine the date on the requisition contained therein and see if you can answer my question, that is, state to the jury the date of the requisition for the ferromanganese which you purchased from Lyman-Evans, a fictitious corporation?

A. The date of the requisition is January 20, 1910.

Mr. ALLEN.—Now, your Honor, the objection is made—

Mr. MORRIS.—Wait a moment, I have another question.

Mr. ALLEN.—It is already shown here more than three years have elapsed and it is within his Honor's ruling, and why should you go any further?

Mr. MORRIS.—Now, Mr. Kettlewell, is it not a fact that you, in the fall of 1912, the month of October or November, or sometime previous to January of 1913, testified in this court freely and voluntarily on behalf of the Government, on direct examination, and also on cross-examination by the defendant Meyer's counsel, relative to each and every transaction that took place between yourself and Lyman-Evans, who was a fictitious person?

A. Yes, I am perfectly willing to tell about that.

Mr. MORRIS.—I am not asking you whether you are perfectly willing to tell about it, I am asking you

(Testimony of J. A. Kettlewell.)

if you did not so testify. Say "Yes" or "No."

A. Yes, I answered the question. [359—308]

Mr. ALLEN.—Your Honor, I object to the question and move to strike out the witness' answer. He goes back, now, to another record—

Mr. MORRIS.—Mr. Coiner was the then District Attorney? A. Yes, sir.

Q. And the gentleman who examined you?

A. Yes.

Q. In said proceeding, and since that time, and down to the present, no criminal proceeding of any kind has been instituted against you by the Government of the United States, or by any other legally constituted authority? A. No.

The COURT.—Is that all with this document you further identified?

Mr. MORRIS.—Yes, sir, that is all on that subject, your Honor.

Q. Mr. Kettlewell, in the course of my cross-examination on yesterday I asked you if you had ever opened any bids—

Mr. MORRIS.—Do I understand this Court to hold now that I can go into this Lyman-Evans transaction, that I can cross-examine the witness now on the Lyman-Evans transaction?

The COURT.—Well, you haven't asked permission to.

Mr. MORRIS.—Well, I now most respectfully ask permission to grant me permission to cross-examine Mr. Kettlewell relative to the Lyman-Evans transaction.



(Testimony of J. A. Kettlewell.)

The COURT.—Proceed and propound your question and see what the court will do with it.

Mr. MORRIS.—Yes, sir.

Q. Mr. Kettlewell, state to the jury, if you can, who constituted the firm of Lyman-Evans & Co.

A. That was a fictitious firm.

Q. Who conceived the idea of using the name of Lyman-Evans & Co. in dealing with the United States Government for the supply of [360—309] ferromanganese?

Mr. MORRIS.—Answer the question, will you please, Mr. Kettlewell?

(Question repeated.)

Mr. ALLEN.—Getting right into this—

The COURT.—And the objection will be sustained, because I don't want to go into the detail of the matter. You can be more direct and leading in the matter in which you interrogate the witness.

Mr. MORRIS.—You testified that Lyman-Evans & Co. was a fictitious name?

A. Yes.

Mr. ALLEN.—Now, your Honor, I object to that.

The COURT.—Just let him answer.

Mr. MORRIS.—I am going to try to follow the Court's ruling. Is that right?

A. Yes.

Mr. MORRIS.—After this requisition, to which I have just directed your attention, of January 20th, 1910, was issued, you, in your official capacity as the Paymaster's clerk in the Pay Office at Seattle, issued proposals to numerous persons, did you not, for the

(Testimony of J. A. Kettlewell.)

supply for the manganese mentioned in that requisition?

A. Yes.

Q. And after issuing those proposals you, over your own signature, put in a proposal as a representative of Lyman-Evans & Co., did you not?

A. No, not over my own signature, no, sir.

Q. Did you not write the name of Lyman-Evans & Co. to that proposal?

A. Yes, in typewriter, I think.

Q. Sir?

A: Yes, it was put in typewriter, I think.

Q. You put it in in what?

A. It was typewritten in. I did that, yes. [361—310]

Q. Part of it was typewritten by “Lyman-Evans & Co.” in type by whom as secretary?

A. I could tell by looking at the folder. I did that, but I can’t tell you the details until I see the folder.

Q. Let me have the Paymaster’s folder, will you, Mr. House, the ferro-manganese transaction. I understand that you prepared the proposal in typewriting?

A. I prepared the proposal in the manner that it is shown there. However it may be, I couldn’t tell until I have seen it.

Q. I now direct your attention to proposal for supplies or services—

Mr. ALLEN.—Your Honor will understand my objection goes to all these questions pertaining to this particular transaction.

(Testimony of J. A. Kettlewell.)

Mr. MORRIS.—(Continuing.) —in cause No. 2042, and ask you if that is a copy of the proposal, or the original proposal, which you made out in typewriting? A. This is the original proposal.

Q. Yes, sir. Now, that was a proposal submitted by you as a representative of this fictitious firm and delivered to the Government, a certain amount of ferromanganese at a certain price? A. Yes.

Q. Now, in the course of the procedure, as we have explained to this jury heretofore, it was necessary for the Paymaster, after receiving this proposal, to issue an award, was it not? A. Yes.

Q. And you did issue in this particular transaction an award, did you? A. Yes, sir.

Q. Now, will you kindly look on the proposal again and see if you find there that the award was issued, and if so, in whose [362—311] handwriting?

A. It is stamped, "Awarded to Lyman-Evans & Co.," and the date in my handwriting.

Q. In your handwriting?

A. Initiated by the Paymaster.

Q. Initiated by the Paymaster? A. Yes, sir.

Q. Who was the Paymaster at that time?

A. Eugene D. Ryan.

Q. Eugene D. Ryan. And Eugene D. Ryan is one of the same men that the Government officials tried to get you to connect with this transaction for *tens* after your arrest, is he not?

A. They asked me if he was connected with it and I told them no, which is true.

Q. I would like to have the privilege of letting the



(Testimony of J. A. Kettlewell.)

jury look at this for a second, if your Honor please.

Mr. ALLEN.—Already admitted in evidence?

Mr. SHIPLEY.—I think it is just identified.

Mr. ALLEN.—Well, with this understanding of the Court,—

The COURT.—If you have any objection to make, make it and I will rule upon it.

Mr. ALLEN.—I do object unless I have a right to cross-examine the witness about this.

The COURT.—The objection is sustained to that going to the jury or going in evidence. He has testified to the fact and that is all that you are entitled to. Proceed.

Mr. MORRIS.—It is a fact, is it not, Mr. Kettlewell, that after this award was made—or going back. Previous to making the award in this particular case, is it not a fact that one Jamison, a legitimate firm, had submitted a bid to the Government for the furnishing of this identical ferro-manganese for 12 cents per [363—312] pound? A. Yes.

Q. Did I not ask you yesterday, in the presence of this jury, if it was not a fact that you opened bids, found out what they were and enclosed them in the envelopes, and thereafter proceeded, after securing information in that way you answered no?

A. No, I don't think—it wasn't—

Q. You did not so answer—

A. It wasn't done in that way. I am not trying to hide—

Mr. MORRIS.—I am not asking you if it was done in that way, I asked you if you did not so answer

(Testimony of J. A. Kettlewell.)

yesterday in the presence of this jury.

A. That I did not open these bids?

Q. Yes, sir.

A. I think that is correct, yes.

Q. I want to direct your attention to the examination on the former trial of this defendant in cause 2042, calling your attention to this Jamison transaction. "How did you know that the Jamison bid was," question asked by me. Your answer, "Well, I must have opened that before the regular opening to have had sufficient time to have prepared the other bid." Did you so answer? A. I may have.

Q. Is it not a fact that you did?

A. Why, I say that I may have. These matters of detail I can't all recall. I can tell you the important facts very clearly.

Q. Maybe I can refresh your memory by reading a little further. Question, "Must have done it?" Answer, "Yes, I must have done it." Question, "Well, did you do it?" "Yes, I probably did." Is that correct?

A. Yes, that is right, the way I remember it now.  
[364—313]

Q. Then, after opening the Jamison bid, you enclosed that in another envelope and left it there to be opened when the time came to open all the bids?

A. No, I wouldn't say that. The information may have been received after they were regularly opened and this filled in later.

Q. Now, after the award had been made to Lyman-Evans & Co., Lyman-Evans & Co. opened up a com-

(Testimony of J. A. Kettlewell.)

munication with some person in this city, the telegraph office, I believe, asking for reference as to who Lyman-Evans & Co. were, did they not?

A. I don't just understand your question.

Q. I withdraw that question. Did you receive any communication from any persons in Colorado relative to this particular transaction? A. Yes.

Q. You wrote to some firm in Colorado whom you knew could supply ferromanganese, did you not?

A. I telegraphed them, I think.

Q. Yes, you telegraphed them. And you received a reply from that firm in Colorado asking for reference as to Lyman-Evans & Co., did you not?

A. I don't remember that part of it. I know we was in correspondence with them.

Q. Is it not a fact that you did receive telegraphic communication from a firm in Colorado relative to this particular transaction, and, in order to furnish reference, you went to the *Sshuey* Bank on Second Avenue in order to have them represent you or give reference? A. Yes, a deposit.

Q. Then you did receive information or inquiry as to who Lyman-Evans [365—314] & Co. were?

A. I would like to explain what I did.

Q. Answer my question and explain.

A. Yes, we had communication with that firm. Telegraphed them for prices and received their quotation, and in this connection I will say that the defendant Meyer was equally implicated with myself. He went to the telegraph office with me and we telegraphed to this firm, and the matter was fixed up be-



(Testimony of J. A. Kettlewell.)

tween us. He knew all about it, and I had nothing to hide in this matter at all.

Q. Will you kindly tell this jury who told you to make that statement here against the defendant Meyer?

A. Nobody told me. It is the truth, and I can't evade the truth, and I don't want to evade it.

Q. You don't want to evade it?

A. I don't want to evade the truth in any particular in this matter.

Q. And in none of your proceedings through this other trial have you tried to evade the truth?

A. Not in any respect, no, sir.

Q. Let me ask you a question right here. Is it not a fact that you entered the employ of the Navy Department, the Storekeeper's Department of the Navy, in January, 1903?

A. Entered the Storekeeper's service at that time?

Q. Yes, sir. A. In 1903?

Q. Was it 1903 or 1902?

A. It was in January, 1902, as I remember it.

Q. January, 1902, all right. And shortly thereafter, within two months or such a matter, did you not borrow from the defendant [366—315] Meyer a hundred and fifty-five dollars and give him your note? A. Yes, sir.

Q. For that amount? A. Yes.

Q. And did you not, on the other trial of this case, swear that you had paid Meyer that note and had taken it up, and immediately after you so testified I

(Testimony of J. A. Kettlewell.)

pulled the note and presented it, shoved it under your nose?

A. No, sir, I didn't testify to that. I would like to say what I did testify to.

A. (Continuing.) I admitted I borrowed this money from Meyer and that I had given him a note for it, and I testified that I had paid the money, and Mr. Morris, I think, asked me what become of the note and I said I presumed it had been destroyed, that I hadn't seen it, had no recollection of it. Then he produced the note, and I did say the bill had been paid and Meyer kept the note.

Mr. MORRIS.—Directing your attention to your evidence on the former trial:

Q. (Mr. MORRIS.) “Mr. Kettlewell, you borrowed from the defendant at different times, ten, twenty, twenty-five dollars, during his employment at the Puget Sound Navy Yard, did you not?” You answered, “No, sir, I borrowed a hundred and fifty dollars from Mr. Meyer. It was either in 1902 or early in 1903. I think it was in 1902, and I paid him that within a year. That is the only money I ever borrowed from Meyer in my life.” Did you so testify? A. I think that is correct, yes, sir.

Q. Yes, sir. “You paid him that, did you?” To which you answered, “I paid him that.” “When did you pay him?” Answer, “I paid him at different times. I didn't pay all at once, I paid him in [367—316] various amounts extending into the year 1903. The close of the year 1903 it had all been paid.” Did you so answer?

(Testimony of J. A. Kettlewell.)

A. Whether I did or not, that is the fact as I remember it.

Q. Well, your memory is good?

A. Well, I don't know.

Mr. MORRIS.—Question, “Did you give Mr. Meyer any evidence of indebtedness at the time you borrowed this money from him?” You remember me asking you that question, do you not?

A. I remember the general trend of the question.

Q. Answer, “I don't know as I did. I don't think I did.” Do you remember so answering?

A. Yes, that is my recollection of it.

Q. Question, “If you did I suppose after you repaid it to Mr. Meyer you destroyed that evidence of indebtedness?” You answered, “Yes, if there ever was anything it has been destroyed, as near as I can remember.” A. Yes, that is right.

Q. Now, after you so testified—what is that exhibit, “61”? Mr. House, get me that note, will you, please? Is it not a fact I immediately turned to Mr. Meyer here and produced that note and handed it to you, and that you admitted that as the note you gave him at that time and that you hadn't paid it?

A. No, sir, I did not say that. I admitted that was the note, but I didn't say that it hadn't been paid. I said it had been paid and Meyer had retained the note and I had forgotten all about the note. The money had been borrowed and was repaid.

Q. And still if we hadn't been able to have sprung that note on you—



(Testimony of J. A. Kettlewell.)

(By Mr. MORRIS.)

Q. Mr. Kettlewell, again calling your attention to the ferromanganese transaction, is it not a fact that you received the Government's [368—317] check in the sum of \$1,012.77 in full payment for the manganese? A. Yes, I received the check.

Q. And thereafter you endorsed upon the back of that check in type "Lyman-Evans" by, in your own handwriting, a name as secretary? A. Yes.

Q. And is it not further a fact that you took said check and delivered it to a gentleman who resided in Seattle by the name of Dam, who is now deceased, without placing thereon your proper endorsement?

A. Yes.

Q. And it is further a fact, is it not, that Mr. Dam gave you credit for \$1,000 of the amount represented by said check and returned to you in cash \$12.77?

A. Yes, sir.

Q. I desire briefly to direct your attention to one other transaction. Did you ever have any dealings with the Government under the name of Smith-Hunt? A. Yes.

Q. Smith-Hunt was a fictitious firm?

A. Yes, sir.

Q. The Storekeeper's Office of the Puget Sound Navy Yard had issued a requisition for 1,000 feet of signal chain? A. Yes.

Q. That requisition was issued either by the defendant Meyer or under his direction? A. Yes.

Q. That requisition called for 1,000 feet signal chain? A. I think it was a thousand feet, yes.

(Testimony of J. A. Kettlewell.)

Q. Yes, sir. And you issued the award to Smith-Hunt? A. Yes. [369—318]

Q. You submitted the proposal to the Pay Office for Smith-Hunt? A. Yes.

Q. You ordered the signal chain for Smith-Hunt? A. Yes.

Q. And in place of ordering 1,000 feet called for by the requisition, you ordered 2,000 feet?

A. Yes.

Q. 1,000 feet of said chain was inspected and passed by the inspectors at the Puget Sound Navy Yard when you delivered same under the name of Smith-Hunt? A. Under this first requisition, yes.

Q. Yes, sir, the first requisition. The other 1,000 feet of said chain was not accepted?

A. Not at that time.

Q. Not at that time. You, as the representative of the fictitious Smith-Hunt, wrote a letter to the Puget Sound Navy Yard Storekeeper making an excuse, or asking them to accept the additional 1,000 feet and giving some reason therefor? A. Yes.

Q. You received, in the course of time, the Government check for the 1,000 feet under the first requisition? A. Yes, sir.

Q. And you had your sister cash said check for you? A. Yes, sir.

Q. Your sister was not mixed up in any fraudulent transactions? A. No, sir.

Q. She knew nothing about your fraudulent transactions with the Government, did she? A. No.

Q. Mr. Dam, to whom you passed this check for

(Testimony of J. A. Kettlewell.)

the ferromanganese, [370—319] knew nothing about your fraudulent transactions with the Government, did he?     A. Nothing whatever.

Q. He was connected with you in no way?

A. I beg your pardon?

Q. He was connected with you in no way?

A. No, sir.

Q. In an unlawful way, I mean. You had your sister cash checks of like nature such as was made payable to the fictitious Smith & Hunt on a great many occasions, did you not?

A. I can't recall any others now; there may have been others.

Q. I am not asking you to recall them; I am asking you if it is not a fact, if you did not testify on the other trial, that she cashed numerous checks of that kind?

A. I say, that I can't recall any; there may have been some.

Q. You also had letters sent to your sister's address out on Aloha Street, is that the place?

A. She lived on Alder Street.

Q. Alder Street, yes, sir. You had numerous letters relating to these crooked transactions between yourself and the Government addressed to your sister's place of residence on Alder Street

A. Not in her name, you understand, but to this place.

Q. I didn't ask you if it was in her name. I asked you if you addressed them to her place of residence?

A. I think you inferred I addressed them to her.



(Testimony of J. A. Kettlewell.)

I don't want you to create that impression. They were addressed to these various firms at this street and number.

Q. It is a fact, is it not, that these letters were addressed to you in person or to you as under a fictitious name? A. Yes. [371—320]

Q. That you called and went to your sister's residence the house that was then kept by her, on that street, that is right, is it not? A. Yes.

Q. And you went to that place on numerous occasions and got those letters? A. Yes.

Q. She at that time knew nothing about your unlawful transactions with the Government?

A. I beg your pardon?

Q. She knew nothing whatever about your transactions while you were receiving those letters?

A. No, nothing whatever.

Q. You also had your sister go to one or more of the respective banks in this city and send money by draft to the east to persons from whom you had bought goods to deliver under fictitious names to the Puget Sound Navy Yard, did you not?

A. I had her go to these banks and pay the drafts that had arrived.

Q. You had your sister do it? A. Yes.

Q. You also had your brother in law, your wife's sister's brother—what is it, your sister's husband?

A. My wife's brother.

Q. Your wife's brother, that is what I thought. Mr. McManus' sister is what relation to you?

(Testimony of J. A. Kettlewell.)

A. Mr. McManus' sister—mother, stepmother, is my half sister.

Q. You had Mr. McManus, at your request—

A. I beg your pardon? When I said this was my wife's brother I thought you referred to another transaction. I didn't understand [372—321] you when I answered in that way.

Q. This sister of yours to whom I refer, what is her name? A. Mrs. McManus.

Q. Mrs. McManus. What relation is she to Pete McManus?

A. I don't know anyone by that name.

Q. Phillip McManus?

A. She is his stepmother.

Q. You also had Mr. McManus, at your request, submit a proposal to supply the Government with cement?

A. Yes. Well, I will qualify that. I gave him a proposal, gave him an opportunity to submit a bid, yes, that is what I meant to say.

Q. Mr. McManus did, at your request, furnish cement for the Government, did he not?

A. He furnished cement on his own responsibility.

Q. And when the payment for said cement, that is, the check, the Government check for the payment of said cement, had been received by you, you went to an old gentleman by the name of Winkler, did you not, and got Mr. Winkler to cash that check for you?

A. No, sir, you have got the transaction mixed.

Q. Sir? A. You have got it all mixed up.

Q. Well, say no, then.

(Testimony of J. A. Kettlewell.)

A. No, Mr. Winkler never cashed a check for Mr. McManus that I know of.

Q. Is Mr. Winkler the gentleman who submitted the bid? A. Why, he submitted—

Q. Answer that yes or no?

A. Yes, he submitted a bid. Not on this same—it may have been on this same or another cement transaction. [373—322]

Q. He submitted the bid at your request, did he?

A. Yes, sir.

Q. He received a check in the course of time in payment for the wares that were delivered to the Storekeeper? A. Yes.

Q. You had him cash that check and return the money to you, did you?

A. He cashed the check, yes.

Q. And Mr. Winkler at that time was an absolutely innocent party, as far as any criminal intent to the transaction was concerned?

A. Absolutely innocent, yes.

Q. And that Mr. Winkler is now under indictment by the Grand Jury who returned the indictment against this defendant Meyer on the evidence you furnished the Grand Jury?

A. I never appeared before the Grand Jury.

Q. You didn't appear before the Grand Jury?

A. No, sir.

Q. Mr. Kettlewell, in your direct testimony the other day I understood you to testify that during the year 1907 that the defendant Meyer came to the Purchasing Pay Office on a number of occasions and



(Testimony of J. A. Kettlewell.)

talked with you, and, among other things, spoke of a zinc transaction?      A. Yes.

Q. That is right. That was during, I believe, the latter part of 1907?

A. At numerous times during 1907.

Q. I say, it was during the latter part of 1907, was it?

A. During the latter part and before the latter part of 1907.

Q. Now, during the latter part of 1907 and before the latter part [374—323] of 1907. What do you mean by before the latter part of 1907?

A. Well, I would like to know what you meant by the latter part.

Q. Well, I should consider the latter part of 1907 would be after the middle of 1907.

A. Well, I thought that possibly you meant November and December by the latter part. Mr. Meyer saw me frequently during the year of 1907 at various times during the entire year.

Q. And he saw you during November and December?      A. Yes, sir.

Q. And Mr. Meyer, I suppose, I understand you to say, came to the Pay Office in the evening?

A. Usually in the evening, yes.

Q. And I understand you to say that two or three times a week?

A. Well, very frequently, yes; sometimes as often as that.

Q. You testified, using your own language, you testified two or three times a week?

(Testimony of J. A. Kettlewell.)

A. Yes, I think I saw him as often as that.

Q. And, of course, he would come in there in the evening—the boat arrived here from Bremerton about what time, six or seven o'clock?

A. About that time, I should think.

Q. Now, did he come to your office generally when he got off the boat, or did he go out to his house and get his meal first and then return?

A. Usually after dinner.

Q. Usually after dinner. That is, he would go to his home and get his meals and then come back down to the office and talk with you for an hour or two, I suppose? A. Yes.

Q. If that occurred two or three times a week, or thereabouts, [375—324] during November and December, it would have consumed probably fifteen or twenty times, a fair estimate?

A. Yes, I have seen Meyer that many times in the navy office.

Q. In the months of November and December?

A. I saw him quite frequently.

Q. Yes, sir. You don't know, as a matter of fact, that the defendant, during all that time, was living with his wife at Bremerton and was not coming to the city of Seattle on the last boat, or any other boat, do you?

A. I don't know where he was living at all. I know that I saw him in the office and talked with him there.

Q. All right. You went to work at the Puget Sound Navy Yard, the Storekeeper's Department,

(Testimony of J. A. Kettlewell.)

the first of January, 1902?      A. Yes, sir.

Q. Previous to the first of January, 1902, you had worked for John Davis & Company, a large real estate firm of this city?      A. Yes, sir.

Q. You worked for John Davis & Company about two months previous to January, 1902, did you not?

A. About that length of time.

Q. And during this two months you were John Davis' cashier?

A. No, I wouldn't say that. I would have to explain that, because—

Q. Answer my question. I haven't come to the place to explain yet. You will have a chance to explain. You were his cashier, were you not?

A. I couldn't answer that question yes or no.

Q. You had charge of the cash, did you not?

A. I couldn't answer that directly. I didn't have entire charge of it, no.

Q. You had access to the cash, did you not?  
[376—325]

A. Oh, yes, yes, I will say that.

Q. And when you quit John Davis & Company you secured a letter from John Davis & Company of recommendation, did you not?      A. Yes, sir.

Q. And after that time John Davis & Company found you were short in your accounts—

A. No, sir.

Q. Let me finish the question. Found you were short in your accounts, and when you were confronted with it you admitted you were \$42 short?

A. No, sir, that is not the fact in the matter at all.



(Testimony of J. A. Kettlewell.)

Q. All right, sir. And thereafter you paid to John Davis & Company, in settlement of the shortage which they claimed, not \$42, but a hundred and forty-two dollars, did you not?

A. In view of my answer to the previous question I couldn't answer that without an explanation.

Mr. ALLEN.—Make your explanation.

Mr. MORRIS.—I submit, if your Honor please, I am entitled to an answer if he did not pay them \$142.

The COURT.—Let him answer and then explain.

A. Yes, sir, I paid them \$142, and I will tell you why.

Mr. MORRIS.—All right.

A. Mr. Davis—I secured an appointment to the navy office, and I was keeping the books at Mr. Davis', and I told him when I—I had to go over there to the navy yard at a certain time, and in balancing up the books I told him that I couldn't account for \$42, there seemed to be a difference of \$42. And I left a memorandum to that effect with Mr. Davis, and told him,—I asked him, and he said he would do this, would have his man go through the books and see if it was correct or not, and I told [377—326] him that if this was an actual shortage of course I would pay it. And he had Mr. Grant, I think, go through the books, and he notified me later on that there was a hundred and forty-two dollars difference. Well, I says, “I would like to go over with Mr. Grant and look the matter over and check over the books,” and he said, “All right, very well” and we did, and there was a difference of \$142. And

(Testimony of J. A. Kettlewell.)

Mr. Davis went away at that time, and they let it run until he came back, and then I went to him and I said that I would like to go over them again. And we did, and we couldn't find where the error occurred, and so I, in order to make the matter straight, I paid Mr.—I gave Mr. Davis \$142, I gave him a note to straighten this up. And after this, after this shortage—it isn't shortage, but after this was found, after I left this note with Mr. Davis, he gave me a letter of recommendation to the navy yard, and everything was open and aboveboard, and he was paid this money, and it was simply an error that I never could account for, and I never denied it. No one accused me of taking any money. It was simply that come up in the ordinary course. Everybody had access to the cash, and I simply, in posting the books, found that there was \$42 that I couldn't account for, couldn't make the books balance, and later they found it should have been a hundred and forty-two. And I examined the books as thoroughly as possible with Mr. Grant and couldn't find that there was any error, so I straightened it up in order to do the right thing about it.

Mr. MORRIS.—I think that is all for the defendant, your Honor, at the present time.

Mr. SCHLESINGER.—Just a few questions, your Honor.

Q. Mr. Kettlewell, was it a part of your official duties to sell supplies to the Government?

A. No, sir. [378—327]

Q. Were you familiar with the rules governing

(Testimony of J. A. Kettlewell.)

your office? A. Yes, sir.

Q. Did you ever obtain permission from the Secretary of the Navy to enter into competition for sales of supplies for the Government? A. No, sir.

Q. Did you, during the time of your employment, maintain a store or stores, a warehouse or warehouses, in the city of Seattle? A. No, sir.

Q. You have mentioned a number of fictitious concerns, the creation of your own mind?

A. No, sir.

Q. Were you interested in any other fictitious concern?

A. I beg your pardon. You said the creation of my own mind.

Q. Yes, sir.

A. I rather object to that. It wasn't the creation of my own mind entirely.

Q. I see. Did you ever confer with Mr. Goldberg, the employee of the Great Western Smelting Company, about creating the firm of Lyman-Evans & Company? A. No, sir.

Q. Did you ever confer with this employee about creating the firm of Smith-Hunt & Company?

A. Mr. Goldberg, you refer to?

Q. Yes, sir. A. No, sir.

Q. Did you ever hear of a man named Peter Brandt? A. No, not of a man.

Q. Did you ever do business with the Government under that name? A. Yes.

Q. Did you confer with Mr. Goldberg concerning the use by you of that name? [379—328]



(Testimony of J. A. Kettlewell.)

A. No.

Q. Did you sell supplies to the Government under the names I have just mentioned? Yes or no.

A. Yes, with this explanation: I was not the only one.

Q. I haven't asked you that.

A. You asked me if I did. If I say yes, that limits the matter to me.

Q. Did you ever disclose to any merchant in Seattle that you were engaged in furnishing the Government supplies? A. No.

Q. Did you ever disclose to any merchant in Seattle that you were competing with them in Government business? A. No.

Q. Did you disclose to merchants generally having business with the Government that you were in a position to prevent them from selling supplies to the Government as you saw fit? A. I didn't—

Q. (Question repeated.)

A. No.

Q. Did these concerns, and other fictitious concerns under which you have operated, have a place of business, capital stock, assets of any visible character?

A. I rather object to the "other concerns."

Q. Well, now, won't you allow your former counsel, Mr. Riddell, to make these objections for you, please? You have no right to object.

A. I can't answer that—

Q. (Question repeated.)

A. The fictitious firms that I had connection with

(Testimony of J. A. Kettlewell.)

had no capital, but the other concerns, I don't know what the gentleman means [380—329] by the other concerns. I admit a number of these, but I don't want to be mixed in other concerns which I know nothing about.

Q. Well, is it not a fact, Mr. Kettlewell, that the only visible asset those concerns had was yourself, you were the chief asset of those concerns, were you not? A. No, sir, I won't say that.

Q. Did you keep a stock of goods on hand?

A. No.

Q. You did not. Under the names of these fictitious concerns, between 1908 and 1911 you sold various and sundry quantities of goods to the United States Government, did you not? A. Yes.

Q. You had talked with Mr. Goldberg, the employee of the Great Western Smelting Company, on numerous occasions, had you not? A. Yes, sir.

Q. Did you not state to him, as the representative of the Great Western Smelting Company, that unless the legitimate merchants accommodated you in the matter of moneys that Lyman-Evans & Company and other of your fictitious concerns, would get all of the Government business at this point? Yes or no. A. No, no, sir.

Q. Did you not say to Emar Goldberg, and other representatives in Seattle,—

Mr. ALLEN.—Just a moment, your Honor. Put in the names of the others.

Q. Did you not say to Mr. Goldberg that it would be better for dealers to be liberal with you rather

(Testimony of J. A. Kettlewell.)

than have competition within the navy yard? Yes or no. A. No.

Q. Did you not repeatedly importune the representative of the [381—330] Great Western Smelting Company for moneys, threatening, in substance, to “Club” it out of business? A. No, sir.

Mr. SCHLESINGER.—Did you not say to him that you had prevented other concerns from doing business with the navy yard where they had failed to accommodate you?

A. No, sir.

Q. Or words to that effect?

A. No, nothing of that kind.

Q. When was it that you first received money from Emar Goldberg, as claimed by you?

A. That first hundred dollars that I received from Mr. Goldberg, as I remember it, was in—was after—along about in January, latter part of January, I think, or February, first of February, somewheres around there.

Q. Did that go into the account of Lyman-Evans & Company, Smith-Hunt & Company, Peter Brandt, or Phillip McManus? Yes or no.

A. There was no account of those people at all.

Q. Did not Mr. Goldberg say to you that he was a mere employee of the Great Western Smelting Company, having charge of the branch in Seattle, that he had no interest in the business except as a salaried employee, and that he would communicate your demands for money to the head of the Great Western Smelting Company either at Chicago or San Fran-



(Testimony of J. A. Kettlewell.)

cisco? Yes or no.

A. No, he never said that.

Q. Never said that to you. Did you ever discuss with Mr. Goldberg the matter of your interest in the Perine Machinery Company of Seattle? A. No.

Q. Did you have any interest in the profits of that concern in its [382—331] dealings with the navy yard? Yes or no.

A. Yes, but with this explanation, that the Perine Machinery Company knew nothing of the profits that I derived from Mr. Wheeler, their representative; they knew nothing of the profits.

Q. Did you have a working contract or agreement with Mr. Wheeler, representing the Perine Machinery Company, that you were to get sixty per cent of the profits going to that concern from sales to this navy yard? Yes or no.

A. Yes, with this explanation: That we had a working agreement, but without any definite per cent. Mr. Wheeler was to pay me money for giving business to the firm.

Q. Didn't you state to Mr. Goldberg, this employee, that you had a fixed interest in the profits of the Perine Machinery Company and you should have a similar interest with other dealers who expected to do business with the navy yard? A. No, sir.

Q. And didn't you, in that same conversation, tell him, in a jocular spirit, that, so far as you were concerned, the Government was Lyman-Evans & Company, Smith-Hunt & Company, P. McManus and Peter Brandt, represented by you?

(Testimony of J. A. Kettlewell.)

A. Never had any such conversation at all.

Q. Did you not have all of these conversations with Mr. Goldberg and, not receiving from him any satisfactory reply, did you not write the letter which has been read to these gentlemen in the box? Yes or no, or a similar letter?

A. I don't just get the drift to that.

Q. Then I withdraw the question and keep it for you later on. How many transactions did you have with Mr. Wheeler for the Perine Machinery Company, roughly estimated, estimating within one or [383—332] two hundred, if you can?

A. There were a great many; I wouldn't attempt to estimate them.

Q. Did you not know, whilst you were engaged in these various transactions, that you were violating your oath of office as a Government clerk?

A. Yes.

Q. Did you know that you were violating your oath of office as you kept repeating these transactions?

A. Yes.

Q. Did you have any care as to the number of violations, felonies and misdemeanors and other crimes that you were continuously committing?

A. What was the question?

Q. (Question repeated.) —at the time you were committing them, of course.

A. I would like to say that—I can't say yes or no this way.

Q. Then I will not press the question. Do you recall, Mr. Kettlewell, stating to Mr. Goldberg that you

(Testimony of J. A. Kettlewell.)

had had at least one thousand transactions with Mr. Wheeler, and they were making money and conducting business without any difficulty or hindrance upon your part?

A. No, I couldn't have made that statement, because the number that you refer to, one thousand, never entered my head.

Q. I am not particular as to number in talking with you, Mr. Kettlewell.

A. You asked me if I remember a thousand. No.

Q. You didn't even mention 999, I presume?

A. No, never.

Mr. SCHLESINGER.—Did not Mr. Goldberg tell you he had no authority to enter into any such arrangement with you, your [384—333] best recollection, yes or no? A. No, sir.

Q. Did you have any letter-heads printed for these various fictitious concerns, Mr. Kettlewell?

A. No, I think not.

Q. Where did you receive your mail?

A. I told Mr. Morris, the letters were received at the address of 625, I think it was, Adler Street.

Q. Who is Mr. P. McManus?

A. He is a gentleman residing in Seattle.

Q. Is he a relative of yours?

A. A distant relative.

Q. Did you operate with the Government under his name, with his consent or without his consent?

A. He did business with the Government, if that is what you mean.

Q. Well, did you invite him to submit bids?



(Testimony of J. A. Kettlewell.)

A. As I invited other people to submit bids.

Q. Did he have a warehouse in Seattle, or a store, merchandise store?

A. I don't know whether—he had no store. Whether he had a warehouse or not, I don't know.

Q. In other words, your familiarity with your relatives doesn't extend to giving you that knowledge? A. What is that?

Q. I withdraw that. Can you estimate, Mr. Kettlewell, how many frauds you have committed on the Government in number, about? A. No, sir.

Q. Can you estimate how many forgeries you have committed against the Government?

A. No, sir. I wish to say this in explanation of that answer, that this was all a part of one conspiracy.

Q. You said that so often. [385—334]

A. These are mere details.

Q. You said that very often.

A. And it is true.

Q. And I suppose the jury will take it in the light of your previous answer.

Mr. SCHLESINGER.—Did you furnish to Mr. Hutson, through your erstwhile attorney, Mr. Riddell, a partial list of the offenses that you had committed up to that time—what date was that, please, Mr. Riddell, when you received that list from him, about the date?

Mr. RIDDELL.—I never received any list from him.

Mr. SCHLESINGER.—You did not?

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—No.

Mr. SCHLESINGER.—What date was it that you furnished a list to the United States Attorney, either personally or through your former counsel, containing a list, a partial list, of your then committed crimes, about what date?

A. I don't know that I ever submitted a list to anyone.

Q. Of course, you did testify in this Court, did you not, in the trial of the Government vs. Mr. Meyer, the defendant here, you remember that fact?

A. Remember that I said that there was a list?

Q. Do you remember the fact that you testified as a witness?      A. Oh, yes; yes.

Q. Were you not told by your attorney, Mr. Riddell, or Mr. Hutson, that you had committed enough offenses as a Government employee to justify a light sentence, and did he not tell you that he would arrange and bring about a compromise upon one indictment, which would simply mean a few months of imprisonment?

A. No, sir; nothing of that kind was ever talked about, not in that way. [386—335]

Q. Well, not in that way. Mr. Kettlewell, I am not quite so technical as you. Was that it in substance?

A. I can't say that. I admitted to these offenses. I don't understand your question exactly. I admitted this thing was done; I didn't make any bones about it. They had the goods on me, so I didn't make any bones about it.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, after your arrest, did you not have on hand a large quantity of hexagon nuts of various sizes which you had purchased? A. Yes.

Q. Did you not make such a compromise as enabled you to dispose of those nuts and receive the money therefor?

A. I sold the nuts, but not to the Government.

Q. Sir?

A. The nuts were sold, but not to the Government.

Q. But you sold those nuts to some private individual and retained the moneys, did you not?

A. Yes. I bought them and I sold them.

Q. Has the Government ever brought any case or cases against you to compel you to disgorge any moneys that you had received, yes, or no?

A. This had nothing to do with the Government.

Q. Won't you please answer my question?

A. I can't. I don't want to mislead you or put myself in a bad light.

Q. (Question repeated.) A. No.

Q. Did you not sell those nuts, amounting to how many thousand pounds, by the way, to the best of your recollection?

A. I think there were about 40,000 pounds.

Q. 40,000 pounds. Did you not sell those nuts, amounting to 40,000 pounds, after your arrest, under the advice of your then [387—336] counsel, Mr. Riddell?

A. No, I never asked Mr. Riddell anything about it.

Q. Did you consult with him about it?



(Testimony of J. A. Kettlewell.)

A. About the nuts?

Q. About selling them.

A. No, my private property; I sold them to get rid of them.

Q. Under whose name did you purchase those nuts, which one of the many fictitious concerns, if you recall? A. I can't recall just now.

Q. I will not compel you to tax your memory; there are so many names. Did you transact any business with the Government during your few months of incarceration under your plea of guilty to one indictment, yes or no?

A. I do not understand that.

Q. (Question repeated.)

Q. Did you continue selling supplies to the Government under fictitious names whilst you were confined? A. No.

Q. Mr. Kettlewell, was immunity extended to you by the Government's officials covering all of these unindicted transactions as well as those upon which you were indicted?

A. No immunity was rendered to me in any respect.

Q. Well, indictments were dismissed, were they not? A. Yes, sir.

Q. And you were not prosecuted on those contained in the list which you had furnished, yes or no?

A. I didn't say that I furnished a list. I can't answer that.

Q. You didn't say you had furnished a list?

A. I don't think that I did.

(Testimony of J. A. Kettlewell.)

Q. Let me call your attention, Mr. Kettlewell, to your testimony [388—337] given in the trial against Mr. Meyer, appearing at page 429: “Subsequent to your arrest on the 28th day of March, and up to the time that you entered your plea of guilty in this court in September, is it not a fact that you furnished to Mr. Hutson, the Deputy District Attorney, and to other persons connected with the Government, all the information you had relative to your transactions, Mr. Wheeler’s transactions, the Perine Machine Company?” Answer, “I furnished the Government all information concerning my own transaction, and where those transactions of mine intermingled with other people’s transactions, I was compelled to tell that also.”

A. Yes, certainly.

Mr. ALLEN.—You spoke about a list.

Mr. SCHLESINGER.—Did that information appear in the shape of a list? A. No.

Q. Or did you give it by mere word of mouth, yes or no?

A. Well, how can I answer yes or no to that?

Q. Well, how was the information imparted?

A. Well, I can tell that.

Q. By a list or by word of mouth?

A. I would like to say how it was given.

Mr. ALLEN.—That is what he wants, Mr. Kettlewell. Go ahead.

Mr. SCHLESINGER.—How was it given, by a list or word of mouth?

A. The Government officials went through the

(Testimony of J. A. Kettlewell.)

records and would bring these folders and interrogate me about them and I told them about each particular case.

Q. Have you ever been prosecuted, placed upon your trial, with respect to any one of these transactions, yes or no?

A. No; with this explanation, that a trial wasn't necessary, as I [389—338] admitted the facts.

Q. Did you ever have occasion to raise the bids of Perine & Company for potato peelers? A. Yes.

Q. Did you alter it at your own sweet will and without consultation with your superior officers whenever it suited your purpose? A. Yes.

Q. Did you have any consultation with the Paymaster with respect to any of these matters?

A. No, with this explanation, that no illegal matters were ever brought up. I consulted him in regard to the bids in a general way, but he knew nothing about the illegal part of it.

Q. You for many years systematically deceived him, did you not? A. Yes.

Q. Have you been assisting the prosecution in this case, Mr. Kettlewell? A. I can't say that I have.

Q. Have you not been in constant consultation with Mr. Riddell, the present prosecutor here, and your former attorney?

A. He has asked me a great many questions and I have answered them.

Q. And you have done that every day for some time, have you not? A. No, sir; not every day.

Q. Well, you have done it on many occasions?



(Testimony of J. A. Kettlewell.)

A. Oh, yes; yes.

Q. Have you aided him in these examinations of these numerous documents here introduced in evidence?

A. They have called my attention to these papers, yes.

Q. And you have assisted in the examination?

[390—339] A. Yes.

Q. Was it possible, Mr. Kettlewell, for any merchant transacting business with the Government to prevent you from passing on the bids or examining the papers? A. I don't understand that.

Q. Well, I withdraw it. Is it not a fact that merchants transacting business with the Government were compelled to have that business done through you? A. Oh, no, not necessarily.

Q. Didn't you pass on bids and papers, as you have testified?

A. Yes, but it wasn't necessary—the Paymaster took it out of my hands sometimes.

Q. Mr. Kettlewell, *are to-day* doing business with the navy yard under any fictitious names?

A. No, sir.

Q. Do you consider, Mr. Kettlewell, that you are under any more obligation to tell the truth here than you were to tell the truth to your superior officials whilst you were under oath? A. Yes, I do.

Q. Did you ever have any conversation of any kind or character with any of the eastern officials of the Great Western Smelting Company, or any of the San Francisco officials?

(Testimony of J. A. Kettlewell.)

A. Not that I know of.

Q. Did you ever meet a Mr. Alper, the head of that concern?

A. I think that Mr. Goldberg introduced me in the office, if I remember.

Q. You met a Mr. Alper?

A. Yes, I think so. I very faintly recollect that.

Mr. SCHLESINGER.—I want to call your attention, Mr. Kettlewell, to what purports to be a copy of a public bill. Do you [391—340] recognize that as a true copy?

A. Yes, sir, I think that is a true copy.

Q. I will call your attention to an endorsement upon that bill reading—

Mr. ALLEN.—Pardon me, before you read it—

Mr. SCHLESINGER.—Do you wish to see it, Mr. Allen?

Mr. ALLEN.—I would like to.

Mr. SCHLESINGER.—You have the original.

The COURT.—Defendants' exhibits?

Mr. SCHLESINGER.—Yes, your Honor.

(Paper referred to marked Defendants' Exhibit "G.")

Q. Mr. Kettlewell, you knew there was a rule requiring bids to come from legitimate bidders, did you not? A. Yes, sir.

Q. You knew that there was a rule requiring bids to come from persons engaged in trade, did you not?

A. Yes, sir.

Q. And you knew all of those matters when you were engaged in these various transactions?

(Testimony of J. A. Kettlewell.)

A. Yes, sir.

Q. Now, calling your attention to this stamp (showing), will you kindly read that aloud so the jury may hear you?

Mr. ALLEN.—Is that introduced in evidence?

Mr. SCHLESINGER.—Yes, and marked Exhibit “G.”

A. “United States Navy Pay Office, Seattle, Washington. Paid May 26, 1908. Robert H. Orr.” The rest is blurred.

Q. And that is marked “Paid,” is it, on May 26th, 1908. I will ask you whether the check was delivered together with that paper upon that date?

A. I think that it must have been, yes.

Q. You think it must have been? [392—341]

The COURT.—What date was that?

Mr. SCHLESINGER.—May 26th, 1908. If it had not been so delivered it would not bear the imprint “Paid,” would it? A. No, I think not.

Q. Do you know a man named Charles Farley?

A. Charles Farley?

Q. Charles Farley. Do you know a man named Charles Farley? A. I don’t recollect the man.

Q. Charles H. Farley?

A. I don’t recollect the man, sir.

Q. Did you have a conversation with Charles F. Farley, or H. Farley, in Seattle on last Monday, in which you said to him, “It would be safe on your part in testifying to anything, as your former attorney, Mr. Riddell, would protect you,” or words to that effect? A. No, sir; I certainly did not.



(Testimony of J. A. Kettlewell.)

Q. You certainly did not? A. No, sir.

Q. You say you don't know any such man?

A. I don't know the name.

Q. You don't know the name. Well, do you know any man who has a name similar to that?

A. No, I can't say that I do.

Q. Where were you on last Monday at about the hour of 11:30 o'clock?

A. I think that I was probably in this building.

Q. Where did you have luncheon on that date?

A. I can't recall that, either.

Q. That is all on that score.

A. Frequently I don't take lunch. [393—342]

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—Mr. Farley in the courtroom?

The COURT.—Proceed with rebuttal, if there is any.

(By Mr. VANDERVEER.)

Q. Mr. Kettlewell, I was not present during your direct examination. I am informed that you testified that when you received from the Storekeeper's Office at Bremerton the requisition for this 50,000 pounds of zinc the time limit for delivery was fixed at 15 days after the award?

A. The requisition read 15 days.

Q. And that you changed that to five days after award? A. Yes.

Q. Did you do that at the request of Mr. Corder?

A. No, sir.

Q. Or for Mr. Corder? A. No, sir.

Q. Or with his knowledge? A. No, sir.

(Testimony of J. A. Kettlewell.)

Q. Do I understand also that you withheld the sending out of the proposal for a certain length of time?     A. Yes.

Q. Did you do that at Mr. Corder's request or suggestion, or with his knowledge?     A. No, sir.

Q. Or in any manner for his benefit?

A. No, sir.

Q. There is a certain advantage, is there not, in receiving proposals as early as possible? I am informed that you testified that you delivered in person to the Seattle Hardware [394—343] Company, Schwabacher, and to other people, a number of the proposals which were sent out on this requisition?

A. Yes.

Q. And that you mailed Mr. Corder's—that you sent Mr. Corder's to him by mail?

A. I think that was mailed, yes.

Q. Did you send his before or after you delivered the others, or did you mail it the same day that you delivered the others?

A. Mailed the same day, I presume.

Q. So that, in the natural course of the mail deliveries, he probably did not receive his proposal until the day after you had delivered them to the other people?     A. Probably not.

Q. There could have been, then, no intention on your part, or purpose on your part, to favor him in that connection?     A. No, sir.

Q. Did you ever have any conversation with Mr. Corder prior to the making of the award on this requisition regarding any matter pertaining to this

(Testimony of J. A. Kettlewell.)

zinc? A. No, sir.

Q. Did you see Mr. Corder or he come to see you about the matter at all? A. About this matter?

Q. About this zinc. A. No, sir.

Q. When was the first time that you did see Mr. Corder in any connection with this particular zinc transaction?

A. Mr. Corder was in the office, in the navy pay office, when the bids were opened.

A JUROR.—Talk louder.

A. Mr. Corder was in the Pay Office when the bids were opened. [395—344]

Mr. VANDERVEER.—It is customary, is it not, for contractors who bid on a job to be present when the bids are opened?

A. Yes.

Q. I understand that when the bids were opened it was discovered that Mr. Silverstone was the lowest bidder? A. The Fowler Metal Company, yes.

Q. Or the Fowler Metal Company. And Mr. Corder left without saying anything, as you recall, about it, and came back later?

A. Yes, he left the office at that time. He didn't say anything at the time—

Q. Did he, at the time the bids were opened, do or say anything which indicated that he believed this Fowler Metal Company bid was not a legitimate bid, the time that the bids were opened?

A. He didn't say anything at the time the bids were opened.

Q. And, so far as you know, he believed, his ac-



(Testimony of J. A. Kettlewell.)

tions indicated at least, at that time he believed it was a *bona fide* bid?      A. Yes, I presume so.

Q. And later he came back and complained it was not a *bona fide* bid?

A. He came back within an hour or so and made a very strong protest against the bid being awarded to Fowler Metal Company.

Q. And that is just what any honest contractor ought to do and would naturally do, isn't it?

A. I would think so.

Q. Did you at any time, Mr. Kettlewell, enter into any conspiracy with Mr. Corder to defraud the Government in the purchase of this zinc?      A. No, sir.

Q. Or any conspiracy of any kind relating to this zinc?      A. No, sir. [396—345]

Q. Or any agreement or confederation of any sort with reference to this zinc?      A. No, sir.

Mr. VANDERVEER.—That is all.

(By Mr. SCHLESINGER.)

Q. One-half of this zinc was furnished by Corder & Company, was it not?

A. I don't know anything about that.

Mr. SCHLESINGER.—That is all.

(By Mr. VANDERVEER.)

Q. When was the first time, Mr. Kettlewell, you ever saw Mr. Silverstone?

A. Either the day the bids were opened or the day before; the day of the opening of the bids, I think.

Q. The occasion, without reference to the time, was when he brought in his bid, was it?

A. Yes, when he made inquiry.

(Testimony of J. A. Kettlewell.)

Q. And whatever conversation you had with him then was just such a conversation as you would have with any bidder? A. Yes, sir.

Q. And the next time you saw him when the bids were opened?

A. I think he was there when the bids were opened. I am not positive, but I think he was there.

Q. Well, did you at any time have any conversation with him in the course of which you conspired or confederated or agreed in any manner with him?

A. No, sir.

Q. Your dealings with him were just what they should be with any [397—346] contractor?

A. Yes, sir.

Mr. VANDERVEER.—That is all.

On redirect examination the witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Kettlewell, counsel has asked you at considerable length in regard to a ferromanganese deal. That was in the year 1902, was it not?

A. I think it was, sir; I don't remember the exact date.

Q. Well, if that is the date that is shown by the folder here, would you say that was approximately the correct date?

Mr. SCHLESINGER.—22d of January, 1910.

Mr. ALLEN.—22d of January, 1910, the date supplied me by counsel. If the folder so says you would say that was the time?

(Testimony of J. A. Kettlewell.)

A. If the folder says that, that is right.

Q. In other words, that was about two years after Mr. Goldberg handed you this hundred dollars; isn't that true?      A. Yes.

Q. Now, in this ferromanganese deal Lyman-Evans & Co.—explain to the jury just what that requisition called for and how much was actually delivered?

A. The requisition calls for 4,000 pounds of ferromanganese, lump, 80 per cent pure.

Q. Take a look and find how much was delivered.

A. The Inspection Call from the navy yard shows that 4125 pounds were delivered.

Q. What was the original requisition for, how much?      A. 4,000 pounds. [398—347]

Q. And how much was delivered?

A. 4125 pounds.

Q. Is that the acceptance, now, or the delivery?

A. That was the amount accepted under that requisition.

Q. How much was delivered? Does it show there how much was delivered or how much was rejected at that time?

A. The receiver's report shows that three barrels were delivered, and the bill, the dealer's bill calls for 4,400 pounds, and 4,125 pounds were actually received, and noted that 275 pounds were not received.

Q. 275 pounds not received?      A. Not received.

Q. It was short that sum?

A. Evidently, yes, sir.

Q. This Lyman-Evans concern, this fictitious con-



(Testimony of J. A. Kettlewell.)

cern, tell the jury, Mr. Kettlewell, who were the parties that composed this fictitious concern of Lyman-Evans & Company, who was interested in it and what was their interest? A. Myself and Mr. Meyer.

Q. Yourself and Mr. Meyer. You mean by Mr. Meyer the defendant sitting here? A. Yes.

Q. When you had this requisition come through for 4,000 pounds of this particular kind of ferromanganese, lump manganese, what did you order from the east, how much did you order from the east?

A. I think it was 8,500 pounds, if I remember correctly.

Q. Calling your attention to this telegram (exhibiting paper to witness), see if that refreshes your recollection.

A. 8,500 pounds, as I recollect it and as the telegram states.

Q. That is in accordance with that telegram, then, as you [399—348] understand it?

A. Yes, sir.

Q. In other words, you ordered 8,500 pounds and had a 4,000 pound requisition then in sight. What became of the other 4,500 pounds?

A. It was all shipped to the yard at one time.

Q. It all went to the yard at one time. Well, what became of that excess delivery of 4,500 pounds?

A. A subsequent requisition was prepared at the navy yard to cover that.

Q. Calling your attention to Plaintiff's Exhibit Number "59," which is requisition No. 192, Naval Supply Fund—

(Testimony of J. A. Kettlewell.)

The COURT.—What exhibit?

Mr. ALLEN.—Plaintiff's Exhibit "59."

The COURT.—No, that is not the number.

The CLERK.—That is "59" in the old case, last year.

Mr. ALLEN.—I thought it was in this case, I beg your pardon. See if you can identify that, Mr. Kettlewell.

A. I can.

Mr. ALLEN.—We ask that be marked for identification.

(Same being marked Plaintiff's Identification "35.")

Q. This is the folder for requisition No. 192, Naval Supply Fund, series 1910. We offer this in evidence, gentlemen.

Mr. SCHLESINGER.—What is that?

Mr. ALLEN.—This is the folder for 4,000 pounds of your ferromanganese.

Mr. MORRIS.—Mr. Schlesinger, I know what it is and we have no objection.

Mr. SHIPLEY.—It is the same folder we offered.

Mr. ALLEN.—It is now admitted, by stipulation of counsel, in [400—349] evidence.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "35.")

Q. Tell the history of this requisition to the jury. You have 4,500 pounds of ferromanganese lying over on the dock. What is the connection between yourself, if there is any?

A. Before this requisition was made, and at the

(Testimony of J. A. Kettlewell.)

time the previous requisition was made, it was agreed between Mr. Meyer and myself to order 4,500 pounds in excess. Mr. Meyer agreed to have a requisition come through to cover this, and this is the requisition that was made.

The COURT.—That number “35”?

Mr. ALLEN.—That is Plaintiff’s Exhibit “34.”

Q. In other words, he put through that requisition and took up the excess? A. Yes.

Mr. MORRIS.—We object to the leading form.

The COURT.—The witness has already testified to it.

Mr. ALLEN.—Is Mr. Farley in the courtroom, just referred to? Will you stand up, Mr. Farley, if you are here, I want you to be identified. (No response.) Mr. Farley doesn’t seem to be present. Counsel propounded some questions to you in regard to other transactions between yourself and other parties here, or parties who are proper parties to this action. Explain to the jury, did each and all of those transactions occur long subsequent to the time when Mr. Goldberg handed you the hundred dollars out in the hall down in the Navy Pay Office?

A. What requisition do you refer to?

Q. I am referring to these transactions about which counsel have at such length interrogated you here, these gentlemen on the [401—350] other side.

A. As a matter of fact, I know these things happened. I don’t remember the dates. The folders will show that.



(Testimony of J. A. Kettlewell.)

Q. I will ask you particularly about the Smith-Hunt signal chain transaction. The folder shows that is of the year, approximately, 1909. Does that conform to your recollection in the matter, April 8th, 1909? Take a look at it and see if that is approximately right. A. Yes, that is the chain.

Q. That is the chain episode?

Mr. ALLEN.—In other words, this occurred a year and three months subsequent to the time Mr. Goldberg handed you the hundred dollars out in the hall?

Mr. SCHLESINGER.—I object as calling for a conclusion.

The COURT.—He can give the facts about these matters to which his attention was called and let the jury draw the conclusion from the other testimony.

Mr. ALLEN.—Some mention was made of the Perine Machinery Company and the working of the company. Who was interested with you in the transaction?

A. Mr. Wheeler.

Q. Mr. Wheeler. Was Mr. Meyer tangled up in the matter as well? A. Yes, sir.

Mr. SHIPLEY.—We object to this for the reason this is one of the matters involved in the cause for which Mr. Meyer, one of the defendants in this case, was tried and found not guilty by a jury in this courtroom.

The COURT.—Objection overruled. That is a matter for the jury.

Mr. SHIPLEY.—Exception.

The COURT.—Exception allowed. [402—351]

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—And this Perine working agreement, in which Mr. Meyer had his interest as well, was about a year after this time that Mr. Goldberg gave you the hundred dollars, is that true?

A. Yes, sir.

Mr. ALLEN.—Well, leading back to that question merely. You stated that when requisition 438 went through that a certain sum of money was paid you by Mr. Goldberg. Now, state to the jury what Mr. Goldberg said, if anything, at that time with reference to the sum which he was to pay, or did pay, to the defendant Meyer.

Mr. SCHLESINGER.—Now, if your Honor please, that is a part of their case in chief—

The COURT.—This is not redirect and I have permitted him to ask it as an original question.

Mr. SCHLESINGER.—Whatever your Honor says.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. I don't get the question just yet.

Mr. MORRIS.—We object to that, your Honor, as gone into in chief.

Mr. ALLEN.—Read the question. (Question repeated.) —which had been paid.

Mr. MORRIS.—I am objecting to it on the ground it was gone into by the Government in chief.

Mr. RIDDELL.—Did Mr. Goldberg tell you why he had to pay Meyer \$500.00 and only pay you \$350.00?

Mr. SCHLESINGER.—That has been gone into,

(Testimony of J. A. Kettlewell.)

or should have been, if not.

The COURT.—Well, let him answer this question.

A. Yes.

Mr. RIDDELL.—What did he say?

A. He said that he could only give me \$350.00 on this, that he had [403—352] to promise to give Meyer \$500.00 before the requisition was prepared, and that he had to keep that promise in order to facilitate other business that might come to him.

Mr. ALLEN.—One more question, Mr. Kettlewell, on that requisition for signal chain.

Mr. SHIPLEY.—We object to counsel for the Government sitting here and nodding his head and affirming statements made by his own witness on the witness-stand, which was done three times during this last answer.

The COURT.—I saw counsel on both sides nodding their head, so neither side need take exceptions to that.

Mr. ALLEN.—Mr. Kettlewell, something has been said regarding the signal chain. That original requisition was for two thousand feet, was it not, I mean the original—how much was the requisition, as you recall it?

A. One thousand feet.

Q. One thousand feet. How much did you order from the east, this fictitious firm?

A. Two thousand feet.

Q. Two thousand feet. Mr. Meyer, the defendant, was interested in that concern, was he not?

A. Yes.



(Testimony of J. A. Kettlewell.)

Q. What became of the excess delivery of one thousand feet of chain?

A. Mr. Meyer caused a requisition to be prepared to cover that extra thousand feet.

Q. And that went through, did it? A. Yes.

Mr. SCHLESINGER.—I think, your Honor, he has exceeded the limit.

The COURT.—This is rebuttal now. I will frankly state the testimony of the other answer was just as before. [404—353]

Mr. ALLEN.—Mr. Kettlewell, when you found, as you have stated in your cross-examination, that the Government officials had the goods on you, to use your own expression, with what officer, prosecuting official, of the United States Government did you come in contact?

A. With Mr. Hutson.

Q. Mr. Hutson. He is now an attorney of this city, is he not? A. Yes.

Q. When you talked to Mr. Hutson did he tell you, or did he not, that you were entitled to the service of counsel in the matter? A. Yes.

Mr. ALLEN.—What did he tell you with reference to your rights in the employment of counsel?

A. He advised me to—he said—“I don’t see you need much counsel; you had better get some one to represent you.”

Mr. ALLEN.—Mr. Kettlewell, hadn’t you, as a matter of fact, stated to the secret service employees of this city substantially all the facts; hadn’t you confessed, in other words?

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—Hadrn't you stated the facts regarding a number of these transactions, if not all of them, before you actually came in contact with the prosecuting officials?

Mr. SCHLESINGER.—We object to that on the ground it calls for a self-serving declaration; it is not redirect examination; it is not rebuttal, and does not tend to prove or disprove any issue here of any kind or character.

The COURT.—I think it is a proper inquiry on cross-examination as to whom the declaration was made first. Proceed.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)      A. Yes. [405—354]

Q. Was your statement as made to those secret service men, was it made or coupled with any promise of any kind from any prosecuting official of the United States Government?

Mr. SCHLESINGER.—We object as calling for an opinion of the witness; it is immaterial, incompetent and irrelevant, not redirect examination, and self-serving.

The COURT.—No, I don't think so.

Mr. ALLEN.—Didn't Mr. Hutson—you have had some experience now with court and men—didn't Mr. Hutson at all times, in his relation to you, treat you in a courteous, gentlemanly way in which you would expect a prosecuting attorney of the United States to treat any man charged with crime?

Mr. SCHLESINGER.—I object, as Mr. Hutson is not upon trial here, and is immaterial.

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—Have you any criticism to make to this jury in regard to anything in the conduct of Mr. Riddell with reference to his conduct to you, or anything wrong, at this time?

A. No, sir, I have not.

Mr. ALLEN.—That is all.

On *redirect cross-examination* the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. You are a pretty good accountant?

A. I am not an expert accountant.

Q. You have heard the evidence here this morning to the effect that Mr. Corder, now a bankrupt merchant, was entitled to receive one-half of the proceeds of that zinc sale, did you not?

A. Did I hear that?

Q. Did you hear that testimony this morning?

A. No. [406—355]

Q. One-half of the gross proceeds, without deduction? A. No, I didn't hear that.

Q. Then I won't question you on it. That is all.  
(By Mr. MORRIS.)

Q. Mr. Kettlewell, it is a fact, is it not, that all of these folders and other matters that have been propounded to you by Mr. Allen in his redirect examination relative to your transactions with the navy yard were gone into in the former case that was tried in this court a year ago when this defendant Meyer was defendant? A. Yes, I think all of them.

Q. Everything? A. I think so.



(Testimony of J. A. Kettlewell.)

Q. Everything was submitted to the jury fully and completely?

Mr. MORRIS.—You did testify in regard to each and every transaction that took place between yourself and the Government, as shown by these respective folders to which your attention has just been directed?

A. Yes, I think those were all brought in.

Q. And at that time you claimed that each and every one of these transactions involved this defendant Edwin F. Meyer?      A. I don't remember.

Q. And so testified?

Mr. ALLEN.—That was another case, an entirely different state of facts.

The COURT.—Objection sustained. Note an exception. [407—356]

[**Testimony of Charles F. Hutson, for Plaintiff.**]

CHARLES F. HUTSON, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Charles F. Hutson, and my vocation is that of an attorney at law in the City of Seattle. I have been here since 1906. I was once assistant United States Attorney during most of the time from 1906, until I think February, 1912. During that time Mr. Todd was the United States District Attorney. I know Mr. Riddell—he is sitting here in the courtroom. I know Mr. Kettlewell, who is

(Testimony of Charles F. Hutson.)

charged with the crime with the navy pay office. I cannot approximately give the time when I first met Mr. Kettlewell, except that it was at the time of the navy pay investigation, as I have not looked up the records.

Q. That was about, to refresh your recollection, about the month of March, 1910. That was at about that time, then? A. Approximately.

Q. 1911, rather? State to the jury exactly what was said between yourself and Mr. Kettlewell, in so far as you can recall.

Mr. KERR.—I object to that, your Honor, as incompetent and improper. None of these defendants were present.

Mr. KERR.—Now, if your Honor please, Mr. Kettlewell explained the manner in which he was directed by Mr. Hutson to see Mr. Riddell, and it stands there in that case.

Mr. ALLEN.—I want to suggest in the former trial, Mr. Morris has, I am informed, spent a good deal of time talking to the jury about some imaginary deal in regard to the deal.

Mr. MORRIS.—Somebody has misinformed you. Mr. Morris was only before the jury about fifteen minutes.

Mr. MORRIS.—May it please your Honor, we appeal to the Court, then, [408—357] to instruct the district attorney not to make those statements.

The COURT.—I mean that suggestion to the district attorney as well as to yourself.

Mr. MORRIS.—I respectfully submit I am not en-

(Testimony of Charles F. Hutson.)

titled to it in this instance, because I have not done anything.

The COURT.—I appreciate this wasn't your fault this time. I thought everybody understood it. I don't believe that it would be proper to do that. That is not a matter they have a right to cross-examine the witness upon, and it isn't a matter of corroboration, but it would be certainly gross error to permit the conversation between the United States Attorney and the witness.

Mr. ALLEN.—Very well. That is all, Mr. Hutson. [409—358]

**[Testimony of E. Silverstone, for Plaintiff.]**

E. SILVERSTONE, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

I wish at this time to voluntarily testify before the Government. My initials are E. I have lived in Seattle about ten years. I came up here and entered into the wholesale cigar business under the name of Simon-Barman & Company. I was interested in that concern for about three years. I was next interested in the Herald Hotel with my father in law. I am still interested in the hotel. I know the defendant, Mr. Goldberg. I have met Mr. Corder, but I do not know him personally. I have known Mr. Goldberg about ten years. It might be a little longer than that. I knew Mr. Goldberg's wife when she was a little girl. She used to play with my sister,



(Testimony of E. Silverstone.)

and when we came to Seattle we naturally formed a very friendly feeling towards each other. Mr. Goldberg lived at the Herald Hotel up on the hill. In the year 1908, I recall putting in a bid to the United States Government in the name of The Fowler Metal Company. Mr. Goldberg met me in the lobby of the hotel and asked me if I would put in the bid. I cannot give you the exact words, but that he wanted to slip one over on one of his competitors, and I told him I would. I think it was the next morning after breakfast he waited for me out in the lobby, and he had the form, and asked me to come down in the lunch room, which is a floor lower than the lobby, and we used it as a sort of a dance-hall, and he asked me if I would fill in the weight and amount, and so forth, that he had on a piece of paper. That was in the early part of April, 1908. I remember—

Q. Calling your attention to the part of Plaintiff's Exhibit Number [410—359] "7," the same being proposal for supplies or services found therein. I will ask you to take a look at that and see if you can remember that (handing same to witness).

A. I do.

Q. I will ask you what part Mr. Goldberg had in the preparation of that proposal?

A. As far as I can remember, it was all the typewritten part, and, if I am not mistaken, that "hundred" up there, that "hundred" (showing).

Q. Was in there? A. I think so.

Q. In other words, you didn't put it in typewriting yourself? A. No, sir.

(Testimony of E. Silverstone.)

Q. And, as your recollection is now, you didn't put in the "hundred" in that column (showing)?

A. No, I don't think so.

Q. I will ask you as to the signature on the bottom—but state before that, when this request was made what did you say to Mr. Goldberg, with reference to your authority to act for this company?

A. After the bid was made out down to the part of the signature, he asked me to fill it out in the name of the Fowler Metal Company.

Q. You mean to sign it in that name?

A. Yes. And I asked him if he had authority from the Fowler Metal Company, and he said it was part and parcel of their concern at San Francisco, that their concern had bought out the Fowler Metal Company, and he had authority to sign that name.

Q. What did he say to you, if anything, with reference to getting written authority in regard to it?

A. Well, I took Mr. Goldberg's word for that statement, because I [411—360] have known him a number of years, and known him quite closely. And after I had signed it he said, "I will get you written authority for that if you want it." And I says, "Well, perhaps you had better get it for me." There was nothing further said about that until a later day, when I mentioned that fact to him, and he says, "Why, if you want," he says, "I will have them telegraph you." I said, no, that wasn't necessary.

Q. Now, after you had signed this proposal what did you do with reference to a visit to the office, to

(Testimony of E. Silverstone.)

the navy pay office here in the city of Seattle?

A. Mr. Goldberg asked me to take that up to the navy pay office, and I asked him where it was, and he told me it was up in the Walker Building, so I immediately took it up there to the office. After I handed it to a gentleman back of the counter he started to go over to say something to some gentleman sitting in sort of an alcove,—

Q. Who went over?

A. The clerk in the office that I handed the bid to.

Q. Was that Mr. Kettlewell? A. I think so.

Q. According to your best recollection that would be the man? A. That was the gentleman, yes.

Q. What did you do when you went to the navy pay office there in regard to inspection of the board, or anything of that sort?

A. When he took this bid over to the gentleman sitting in the alcove, to kill time I turned around, and I think it was right at the back of me, back of the desk in the office, or the counter, and I looked at the board there, which I think was several applications for bids and things of that kind on.

Q. Prior to your visit there what statement, if any, was made to you by Mr. Goldberg with reference to his relation toward [412—361] Mr. Kettlewell?

A. Well, there was nothing that I can recall that he mentioned Kettlewell's name, but I asked him, "If they ask me anything about this metal what I should say, because I knew nothing about metal." He says, "You just hand it in to the gentleman up



(Testimony of E. Silverstone.)

there, the clerk, he is a friend of mine, and you don't have to have anything to say."

Q. This proposal is dated April 11, 1908. Would it be your recollection that was the date of the proposal as you signed it at that time, April 11, 1908?

A. I think that was about the date.

Q. You think that was about the date?

A. The date that was filled in there was the date.

Q. How long was that before the day of the award, if the award was made on the 15th, how many days before that did you sign it?

A. If the award was made on the 15th it would be four days.

Q. In other words, you signed this proposal about on the 11th, as I understand you?

A. If that is the date.

Q. And the award was made on the 15th. Were you present at the award, as a matter of fact, do you remember?

A. I was not.

Q. You don't think you were up there?

A. No, sir.

Q. After the award was made when did you next hear from Mr. Goldberg in connection with the matter?

A. I don't remember just how long afterwards, but I think it was a short while afterwards he called me up by phone and told me he would like to see me. And I met him some place down town, and he said one of the competitors was making a holler, and he wanted me to come down with him and be introduced to him, and to say that [413—362] I overheard a

(Testimony of E. Silverstone.)

conversation over the telephone, and that was why I put in that bid, and that he should be more careful in his conversation, or to pass it off that way.

Q. What were you to tell this competitor, you had overheard a conversation over the telephone—

Mr. ALLEN.—Who was this competitor who seemed to be disgruntled?

A. Mr. Goldberg took me down and introduced me to Mr. Corder.

Q. This Mr. Corder here (showing)?

A. Yes, sir.

Q. And when you went down there what was said by you or by any one of the three of you?

A. Mr. Goldberg introduced me, and I don't know—he made some remark there, and I—

Mr. SCHLESINGER.—It seems to me, if your Honor please, that any discussion between these gentlemen not connected with this transaction would not be at all material here. The question whether or not the Great Western Smelting & Refining Company had a grievance against the Corder Company, how can that be material? They had some temporary dispute, afterwards amicably settled.

The COURT.—Overruled.

Mr. SCHLESINGER.—Note an exception.

A. I made the remark to Mr. Corder that I had overheard his conversation on the telephone and put in the bid, and in a joking way I said to him, he wanted to be more careful when he was talking over the phone, and he laughed and said, "I guess it is a

(Testimony of E. Silverstone.)

horse on me," or something to that effect, and we went out.

Mr. ALLEN.—They seemed to consider it a good joke, is that true?

A. I wouldn't consider it that way.

Mr. SCHLESINGER.—We object to that. [414—363]

The COURT.—Let him state what was said or done.

Mr. ALLEN.—He said the man laughed, or I so understood him, and I was—

The COURT.—Proceed.

Mr. ALLEN.—Then what happened after this conversation down there with Mr. Corder and Mr. Goldberg and yourself, what did you do then?

A. Why, Mr. Corder said it was a horse on him, or something to that effect, and said, "We will go and have a bottle of wine," and we went over to a saloon on Yesler Way, between First and either Post Street or Railroad Avenue, down under where the First National Bank is. I think it was Sutherland's Saloon, and he bought a pint bottle of champagne, and I told him I didn't drink and would take a cigar.

Mr. SCHLESINGER.—You are in the cigar business, are you not? A. I was.

Mr. SCHLESINGER.—I thought so.

Mr. ALLEN.—This episode, then, as concerns Corder, happened how many days, according to your recollection, after the 15th day of April, 1908?

A. I didn't catch that.



(Testimony of E. Silverstone.)

Q. (Question repeated.)

A. Why, I couldn't say. Some short time afterwards.

Q. Was it within a few days, or two or three days?

A. A few days afterwards.

Q. You don't think it was so much as a week, do you? A. I don't think so; no.

Q. After this conversation when did you next hear about your bid with the United States Government for a lot of zinc?

A. I don't think I heard anything more until Mr. Goldberg called me [415—364] up and told me the check was up there for it. That is my next recollection of that transaction.

Q. Told you the check was up there for you?

A. That is what I understood, I believe.

Q. Did you personally get the check, or did Mr. Goldberg get it?

A. My best recollection is that I got it.

Q. Calling your attention to that part of Plaintiff's Exhibit Number "5," that part which purports to be a check dated May 26th, 1908, payable to the order of the Fowler Metal Company, in the sum of \$7,417.09. Did you ever see the original of which that is a photographic copy before, Mr. Silverstone (exhibiting same to witness)? A. I think I did.

Q. I will call your attention to the endorsements on the back of that check. What did you do with the check when you got it?

A. I took it down to Mr. Goldberg, who was waiting for me at, I think, the Butler Hotel; in fact,

(Testimony of E. Silverstone.)

I am sure it was the Butler Hotel; and I handed him the check.

Q. What did he tell you then with reference to it?

A. He asked me if I would exchange checks with him, give him my personal check for this one. I told him I would if he would endorse it, so he endorsed it over to me, "Pay to the order of E. Silverstone," and signed it "Fowler Metal Company." I then endorsed my name on it and took it to the bank to make a deposit, because I couldn't have given him my check unless I had this one in the bank. The receiving teller told me they could not accept the check that way, as the Government required some official to sign. So I took it back to Mr. Goldberg, and he endorsed it. I think it is "Per E. S. Fowler."

Q. Calling your attention to the situation as it arose at that time, did Mr. Goldberg ask you to sign the check in the first [416—365] instance, or did he not? What is the fact?

A. To endorse it, you mean?

Q. Yes.

A. I don't remember whether he did or not.

Q. In other words, as I now understand you, there was then endorsed by Mr. Goldberg, "Pay to the order of E. Silverstone."

Mr. SCHLESINGER.—I think it speaks for itself.

Mr. ALLEN.—Signed "Fowler Metal Company." At that time the "Per E. S. Fowler, President," was not on there, is that true?

(Testimony of E. Silverstone.)

A. No, sir.

Q. And you then took that to your bank. What is your bank?

A. At that time I was banking with the First National Bank.

Q. First National Bank in the city of Seattle?

A. Yes, sir.

Q. Did you make out on that occasion, do you recall, a deposit slip, which included this \$7,417 check?

A. I did, deposited it to my credit, and immediately issued—

Q. Just a moment. I am talking about this first one, Mr. Silverstone.

Mr. ALLEN.—Calling your attention to the time when you first went to the bank, when this endorsement had been made down to signing the name of the Fowler Metal Company. Did you attempt at that time, Mr. Silverstone, to deposit this check to your account?

A. At what time?

Q. At the time when it was first endorsed down to the words "E. S. Fowler," did you try to deposit it at that time?

A. Before the Fowler—

Q. Yes, sir. A. I did.

Q. Did you make out a deposit slip on that occasion do you recall? [417—366]

A. I must have, because I made out a deposit slip on all deposits.

Q. If the banker's slip shows you had two checks that you deposited there, one for a small amount and the other for this amount, and that was crossed off,



(Testimony of E. Silverstone.)

that would be of the date—approximately what was the day when you first went into the bank?

A. I think June 1st.

Q. June 1st, 1908?

A. The other check was for \$92.20.

Mr. SCHLESINGER.—What is that you have in your hand?

Mr. ALLEN.—He spoke about a deposit slip with two items on.

Q. And you crossed off, then, the big check and deposited the other, is that true as you recall?

A. I guess that is right, or they crossed it out. I don't remember having crossed it out.

Q. What did you next do with this check after you left the bank on this first occasion?

A. I took it to Mr. Goldberg, and he endorsed it "Per E. S. Fowler."

Mr. ALLEN.—Then he made this endorsement of "Per E. S. Fowler"?

Mr. ALLEN.—"President," or something of that sort?

A. Yes, sir.

Q. Did you then take this check back and deposit it in your bank? A. I did.

Q. On what date was it deposited? It shows it was paid on the 2d day of June, 1908. Would that correspond with your recollection of that matter?

A. I think it was June 1st.

Q. Think it was probably June 1st. The bank where it was paid, in the other bank, was June 2d. It may have gone through the next day. What did

(Testimony of E. Silverstone.)

you do with reference to this sum of \$7,417.09?

A. I issued my own personal check to the Great Western Smelting and [418—367] Refining Company.

Mr. ALLEN.—I ask you to identify that instrument (handing paper to witness).

A. That is my check.

Mr. ALLEN.—I ask the clerk to mark it for identification, and move its admission at this time.

The COURT.—It will be received.

Mr. SCHLESINGER.—Object to the introduction of this check as being immaterial, irrelevant, incompetent and too remote in point of time.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

(Check referred to received in evidence and marked Plaintiff's Exhibit "36.")

Mr. ALLEN.—That is your signature (showing)?

A. Yes, sir.

Q. Made payable to the Great Western?

A. Yes, sir.

Q. It bears date of June 1st, 1908. That would correspond with your recollection?

A. Yes, that is the date.

Mr. ALLEN.—(Reading same to jury.)

Q. Was that check cashed by Mr. Goldberg, or the Great Western Smelting & Refining Company, in the due course of business, Mr. Silverstone?

A. I presume it was.

Q. Was it charged against your account, if you

(Testimony of E. Silverstone.)

know? A. Charged against my account.

Q. You personally handed this check to Mr. Goldberg, did you? [419—368]

Mr. SCHLESINGER.—Your Honor, that has been testified to at least three times, and I object to a repetition of it.

The COURT.—Oh, he can answer it.

Mr. SCHLESINGER.—Exception.

A. I did.

Mr. ALLEN.—Mr. Goldberg, the defendant here?

A. Yes, sir.

Q. And was this transaction of handing him your check for this sum of \$7,417, did that immediately follow the deposit of the navy pay check in that sum, or soon thereafter?

Mr. SCHLESINGER.—I object on the ground the checks speak for themselves and the transaction speaks for itself; it is calling for his understanding and conclusion.

A. Oh, I think he may answer the question.

Mr. SCHLESINGER.—Exception.

A. My check was given to him before we left the bank.

Q. After you had deposited this check (showing)?

A. After I had deposited the other check, yes.

Q. And that was on June 1st, 1908?

A. June 1st, 1908.

Q. And it was paid out of your account on June 2d?

Mr. SCHLESINGER.—I object, as the facts are before the jury and speak for themselves, calling for his understanding.



(Testimony of E. Silverstone.)

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Now, what did Mr. Goldberg say after you handed him this check, or do, in the matter?

Mr. SCHLESINGER.—I object to that on the ground this comes at a time when the transaction is supposed to have been closed, and was closed. Any subsequent acts between these people are absolutely [420—369] immaterial and incompetent and have nothing to do with any of the issues involved in this case.

The COURT.—I understand this inquiry is right at that time?

Mr. ALLEN.—Yes, sir, immediately thereafter.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

A. I think it was after we got on the sidewalk out from the bank Mr. Goldberg handed me ten or twenty dollars and says, “Go and buy yourself a new hat,” or something to that effect, I just don’t exactly remember the words.

Mr. ALLEN.—Mr. Silverstone, tell the jury, at the time you put in this bid to the United States Government, did you have any official interest of any kind whatsoever in this transaction?

Mr. SCHLESINGER.—I object to that upon the ground it has been asked and answered that he put this bid in at the request of the Fowler Metal Company, which request was conducted through Mr. Goldberg. He never had one dollar’s worth of

(Testimony of E. Silverstone.)

financial interest, and it is not so claimed by anybody.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. I had no interests whatever.

Mr. ALLEN.—You did it merely—

A. As a friendly act.

Q. As a friendly act for Mr. Goldberg?

A. Yes, sir.

Mr. ALLEN.—Take the witness.

On cross-examination the witness testified as follows: My best recollection was that I personally received that check [421—370] for Mr. Kettlewell. I would not care to swear positively.

Q. Did you ever see this paper before (handing paper to witness)? A. I did not.

Q. Never saw it in your life, did you?

A. No, sir.

Mr. SCHLESINGER.—That is all. Gentlemen, I have shown the witness Defendants' Exhibit "G." He has never seen it before in his life.

The COURT.—Don't argue to the jury.

Mr. SCHLESINGER.—Yes, without argument I show it to you. You have seen it all. That is all.

Cross-examination.

(By Mr. VANDERVEER.)

Q. Mr. Silverstone, did you ever enter into any agreement of any kind respecting the bid that you submitted with Mr. Corder?

A. With Mr. Corder or anybody else.

Q. Nor with anyone else? A. No, sir.

Q. When did you first meet Mr. Corder?

(Testimony of E. Silverstone.)

A. When Mr. Goldberg took me over and introduced me.

Q. That was after the contract had been awarded?

A. I believe so.

Mr. VANDERVEER.—That is all.

Mr. MORRIS.—If the Court wishes, I can save a little time by recalling Mr. McNeil.

The COURT.—To cross-examine?

Mr. MORRIS.—Yes, your Honor.

The COURT.—Very well. [422—371]

**[Testimony of A. R. McNeil, for Defendants  
(Recalled—Cross-examination).]**

A. R. McNEIL, recalled for further cross-examination on behalf of the defendants, further testified as follows:

I am the same Mr. McNeil who was called, sworn and testified on behalf of the Government in this case the other day. I saw Storekeeper Spear sign certain papers that I presented to his desk. They were letters and bills of lading—principally letters. I cannot say that I ever saw Storekeeper Spear sign a requisition without examining it. It was not my province in business there to see him sign requisitions at all.

On cross-examination the said witness testified as follows:

(By Mr. ALLEN.)

Q. That was Mr. Meyer's business, was it not?

A. Yes, sir.

Mr. SCHLESINGER.—We object.

Mr. ALLEN.—Tell the jury what the custom was



(Testimony of A. R. McNeil.)

in that office with reference to the use of a "Red tag," for any matter that called for Mr. Spear's especial interest for the examination of papers.

Mr. MORRIS.—We object to that.

Mr. KERR.—They speak for themselves; they have Mr. Spear's signature on them.

Mr. ALLEN.—I am asking for the office custom of that office then existing.

Mr. MORRIS.—I object as not proper redirect.

Mr. ALLEN.—I will recall him, then, and make him my witness.

The COURT.—If he knows.

Mr. ALLEN.—What was the custom there as to the use of the red flag, or danger signal? [423—372]

A. For papers?

Q. Yes.

A. That was put on papers as urgent, as an urgent sign.

Q. What meaning did that bear to the mind of Paymaster Spear?

A. Well, they demanded his special attention immediately.

Q. They demanded his special attention?

A. Yes, sir.

Mr. ALLEN.—That is all.

(By Mr. MORRIS.)

Q. Mr. McNeil, the red tags to which you have referred was introduced into the office by the Chief Clerk Mr. Barnes? A. Yes, sir.

Q. And did not exist and was not in operation at the time referred to in the requisition in this par-

(Testimony of W. J. Nagus.)

ticular case, that is, on the first of April, 1908?

A. No, sir.

Q. Mr. Barnes did not come to the Pay Office until the following fall, did he?

A. No, sir, about October.

Q. And those red tags were introduced by Mr. Barnes? A. Yes, sir.

Mr. MORRIS.—That is all, sir.

Q. Mr. McNeil, you have been over there a good many years? A. Yes, about six.

Q. Paymaster Spear is under the impression that was in effect there in the office when he went there in January. Isn't he just as likely to be right about the matter as you are?

Mr. MORRIS.—That is all sir. [424—373]

**[Testimony of W. J. Nagus, for Plaintiff.]**

W. J. NAGUS, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

**Direct Examination.**

My full name is Walter J. Nagus. I live in La Salle, Illinois, and have lived there for forty-six years. I am sales manager for Matheson & Heggler Zinc Company; they are smelters of spelter, rollers of sheet zinc and manufacturers of sulphuric acid. I was in the same position in 1908, and that company was in the same business during that year. I have sold zinc to the Great Western Smelting & Refining Company, shipping to Seattle at different times. The two greatest manufacturing zinc companies of the country are located: Matheson & Heggler Com-

(Testimony of W. J. Nagus.)

pany at La Salle, Illinois Zinc Company at Peru, Illinois.

Q. Those are the two big roller zinc plants in the country. How many zinc plants are there in the country, do you know?

Mr. SCHLESINGER.—Your Honor please, I can't for the life of me see why this is material.

Mr. ALLEN.—This is all preliminary.

Mr. SCHLESINGER.—What difference does it make whether there are twenty, thirty, forty, or only one?

Mr. ALLEN.—You were complaining here the other day we couldn't get the zinc.

The COURT.—Let him answer. Note an exception.

A. Do you mean smelters or producers of sheet zinc and plates?

Q. I mean smelters or producers of sheet zinc and plates.

A. There are two leading industries and two or three small rollers, but they are not—they don't amount to very much. There are only two—

Q. The two big plants are these particular institutions? [425—374]

A. Yes, sir.

Q. With which you are connected, with one of them, sales manager?

A. Yes, sir.

Q. What is the capacity of your plant with reference to sheet zinc, say, of the size of 6 by 12 by 1½ inch, how many pounds, or thousand pounds, could you produce in a day in that plant?

Mr. SCHLESINGER.—Object to that as imma-



(Testimony of W. J. Nagus.)

terial, irrelevant and not binding upon any one of the defendants here, whether he can produce one pound or one hundred billion pounds.

The COURT.—I don't see that it is material, because before that could become material you would have to show how much was on hand and how much could be consumed. But I don't see it is material.

Mr. ALLEN.—Well, your Honor,—

The COURT.—Well, just go ahead.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. Well,—

Q. Approximately.

A. Oh, a hundred tons, perhaps a hundred and fifty.

Mr. ALLEN.—Well, beginning at 1907. What was the condition, coming down through the year 1908?

Mr. SCHLESINGER.—Same objection.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. Comparatively quiet the latter part of 1907, and just normal business in 1908.

Mr. ALLEN.—There was no crowded conditions of the mills on or about the first day of May, 1908, was there? [426—375]

A. I don't think so; no.

Q. Calling your attention to what purports to be a letter of date March 16, 1908, written on the letter-head of the Great Western Smelting & Refining

(Testimony of W. J. Nagus.)

Company, I will ask you to see if you can identify that (handing same to witness). A. Yes, sir.

Q. You have seen that before?

A. These are my notations here (showing).

Q. These are your figures on the margin?

Mr. SCHLESINGER.—Speak louder.

Mr. ALLEN.—Those are his notations on the first page, he said. We ask to have marked for identification Plaintiff's Exhibit "37."

Q. Was that letter received by you in due course through the United States mails to your company?

A. Yes, it was.

Mr. ALLEN.—We offer that, your Honor, in evidence.

Mr. SCHLESINGER.—Let me see it, please (examining same). You offer this in evidence, as I understand it, this letter which is marked March 16th?

Mr. ALLEN.—1908.

Mr. SCHLESINGER.—Only that letter?

Mr. ALLEN.—That is the only part I offer at this time.

Mr. SCHLESINGER.—We have no objection to it.

(Letter referred to received in evidence and marked Plaintiff's Exhibit "37.")

Mr. ALLEN.—(Reading letter to the jury.)

Q. Did you quote the Great Western people a price on that car of zinc?

A. My recollection is that we did, yes. In looking over the [427—376] correspondence, we

(Testimony of W. J. Nagus.)

quoted them a price which we agreed to hold good for thirty days.

Q. I show you what purports to be a copy of a letter, take a look at that, Mr. Nagus, and see if you can—

A. Yes, that is my initial; I dictated the letter.

Q. You dictated that letter?

A. That is a press copy.

Q. That is a press copy of the original letter?

A. Signed by the manager, Mr. Wurz.

Mr. ALLEN.—We offer that in evidence as Plaintiff's Exhibit "38."

Q. Did you afterwards receive an order for that car of zinc? A. Yes, we shipped that on later.

Mr. SCHLESINGER.—It seems to me, your Honor, a carbon copy of an alleged letter sent to the Great Western Smelting & Refining Company, the employer of the defendant, is not admissible, and we object to that upon the ground it purports to be a carbon copy of a letter. There is no evidence that the original was ever mailed, or that the defendant had anything to do with either the writing of the letter or the sending thereof. And upon the further ground it is immaterial, incompetent and irrelevant. As I understand, the carbon copy of a letter cannot be admitted unless you show the original thereof was mailed. I think that is a well-known rule.

Mr. ALLEN.—That is a carbon duplicate, not a copy.

The COURT.—Find out what was done with the original.



(Testimony of W. J. Nagus.)

Mr. ALLEN.—What did you do with the original of this letter?

A. It was mailed.

Q. It was mailed to what place?

A. In the regular order, just as it is there. That is not a carbon copy, that is a press copy, a water copy. [428—377]

Q. And you mailed the original to the Great Western Smelting & Refining Company in Seattle?

A. Yes, in the regular order.

Mr. SCHLESINGER.—You mean your concern did?

A. Yes, in my office.

Mr. ALLEN.—We offer this in evidence.

The COURT.—Admitted.

Mr. SCHLESINGER.—Of course, your Honor please, the main objection to that letter is that the defendant here has no control over fixing prices at which the Western Smelting Company shall either buy or sell, that is our objection, therefore it is not binding upon him.

The COURT.—Note an exception.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "38.")

Mr. ALLEN.—This is a letter of March 21st, 1908 (reading same to jury).

Q. Calling your attention to this telegram, Mr. Nagus, see if you can identify that (handing paper to witness)? A. Yes.

Q. You identify that as coming from the files of your company? A. Yes, sir.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—Offer that for identification, and also in evidence. That is the original that came from the company, is it?

A. That is the telegram, yes, as we received it from the—

Q. From the Postal Telegraph office?

A. From the Postal Telegraph office.

Mr. ALLEN.—Offer that in evidence.

The COURT.—It may be admitted.

(Telegram referred to received in evidence and marked Plaintiff's Exhibit "39.") [429—378]

Mr. ALLEN.—“Postal Telegram received April 13, 1908. Main office of the Matheson & Heggler Zinc Company, La Salle, April 13, 1908. Seattle, Washington, April 11. Matheson & Heggler Zinc Company. Ship quick and trace car 25 tons rolled zinc  $\frac{1}{2}$  by 6 by 12. Signed, Great Western Smelting & Refining Company. Shipped April 16, 1908.”

Mr. SCHLESINGER.—What is the number of that exhibit?

Mr. ALLEN.—That is number 39.

Q. You have been in the zinc business a great many years, have you, Mr. Nagus? A. Yes.

Q. You are accustomed, as a part of your business, to keep in touch with both the wholesale price of zinc as obtained from your and other plants, as well as the price paid and submitted by brokers in various parts of the United States. Do you do that any?

A. No, I can't say that we do that particularly. We know in a general way what the eastern people

(Testimony of W. J. Nagus.)

get, but I couldn't say what they do in some parts of the country.

Q. I understand, but do you know what the current price of zinc was at La Salle, Illinois, in the month of April, 1908?

Mr. SCHLESINGER.—We object to that, your Honor please, as being immaterial, incompetent and irrelevant, in no wise binding upon the defendant, and the question, if at all material as against Mr. Goldberg, should refer to this locality and none other. The witness has very frankly said that he did not know the zinc conditions in Seattle or vicinity at or about 1908.

The COURT.—I think on the evidence, as it is before the Court now, showing that the principal manufacturing concerns of metal of this character being located at the point where this [430—379] testimony seeks to establish the value, and the testimony at this time would indicate that there were no enterprises of that kind on the coast, or any large supply of that character of metal, that this testimony perhaps would be the best evidence that the Court could obtain as to the market values of zinc in quantities of that character; and especially when there is testimony—the Court permitted testimony as to what the reasonable profit would be to the merchant in handling the commodity here. That is before the Court now. And I think I will let him answer the question.

Mr. SCHLESINGER.—Exception.

By Mr. ALLEN.—The Court has ruled this ques-



(Testimony of W. J. Nagus.)

tion is admissible. I will ask the stenographer to repeat it.

Q. (Question repeated.) A. Yes.

Mr. SCHLESINGER.—Exception, your Honor.

Mr. ALLEN.—State, then, for the information of the jury, the price of zinc plate, rolled plate, 12 by 6 inches by  $\frac{1}{2}$  inch, on board the cars at or about the first day of April, 1908?

A. \$5.80 a hundred pounds, less 8 per cent discount in carload lots.

Mr. SCHLESINGER.—May it be understood all this goes subject to our objection without our having to repeat it?

The COURT.—Yes.

Mr. ALLEN.—The price, then, that you quoted to Mr. Goldberg, or to his company, and at which you furnished this particular car, was the current price which you would have quoted to any responsible dealer, is that true?

A. Yes, sir.

Q. Do you know the freight rate upon zinc from La Salle, Illinois, [431—380] to Seattle, Mr. Nagus?

A. Yes, sir. Carloads, \$1.25; less carloads, \$1.75.

Q. \$1.25 a hundred, do you mean, Mr. Nagus?

A. Per hundred pounds.

Q. Over what route did this zinc go when it left your plant, do you know? Can you find out from your records?

A. It was Illinois Central, care of the Northern Pacific, is my recollection.

(Testimony of W. J. Nagus.)

Q. Care of the Northern Pacific?

A. I have a record here and the copy of the invoice, if you wish it.

Q. Can you open that record and find the number of that car, Mr. Nagus?

Mr. ALLEN.—You find there any entry of the number of the car, Mr. Nagus?

A. Yes, sir, that is I. C. car.

Q. I. C., meaning Illinois Central?

A. Illinois Central car 39,890, shipped on April 16th.

Q. That went out, then, over the Illinois Central?

A. Care of the Northern Pacific.

Q. Care of the Northern Pacific. That would mean, then, after it left the Illinois Central it would be transferred to the Northern Pacific, is that right?

A. Well, the Illinois Central would take it to Minnesota transfer, yes, sir, and deliver it to the Northern Pacific.

Q. Oh, I see, up near Chicago. I call your attention to Plaintiff's Exhibit Number "29-B," the same being a check of the Great Western Smelting & Refining Company, and paid to J. W. Allen, who was the agent of the Northern Pacific Railroad Company, \$655 for a car of zinc, I. C. 39,890, car number 39,890. Is that the same [432—381] car number and the same description on the car which you just read to the jury?

Mr. SCHLESINGER.—Did you ever have that check?

A. No.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—I know very well he did not.

A. That is the car number.

Q. Illinois Central car number 39,890?

A. Yes, sir.

Q. As it appears on this check stub. Can you take that book, it is plaintiff's exhibit—(handing same to witness)?

A. These two are the one shipment, two invoices of one shipment (showing).

Q. Two invoices of one shipment. What is this book that you just referred to? It says "Zinc files" on the back?

A. That is a copy of every invoice that was made during that period.

Q. During that period to different firms?

A. To different firms, yes, sir.

Q. It is labeled on the back "Zinc files."

A. They are kept in regular order.

Mr. ALLEN.—We offer in evidence page 306 of this book, identified by the witness as zinc files, the same showing the bill to the Great Western Smelting & Refining Company of Seattle, Washington, for I. C. car number 39,890, showing 24,979 pounds of zinc; also page 305 in the same book.

Mr. KERR.—Object to it on the ground it is incompetent; object to the testimony.

Mr. ALLEN.—This is a duplicate of the original bill, is it not?

A. Yes, sir.

Mr. KERR.—Wait a moment. [433—382]

Mr. KERR.—There is an objection pending here.



(Testimony of W. J. Nagus.)

The COURT.—The objection to this, I think, is good in the present condition of the record.

Mr. ALLEN.—Well, your Honor, this is a duplicate of the bill sent out.

The COURT.—That isn't the testimony.

Mr. ALLEN.—I was just asking him that.

Q. As a matter of fact, this is a duplicate of the bill sent out?      A. Yes, a press copy.

Mr. KERR.—You mean it is a letter-press copy?

A. It is a letter-press copy.

Mr KERR.—I renew my objection as incompetent.

The COURT.—It may go in.

(Pages 305 and 306 of the book referred to received in evidence and marked Plaintiff's Exhibit "40.")

Mr. ALLEN.—The first page, for 25,035 pounds of zinc plate, size 1½ by 6 by 12 inches; and the second page being of the same size zinc, 24,979 pounds. That is Plaintiff's Exhibit Number "40."

Q. How did you collect your money from the Great Western people for this car of zinc?

Mr. KERR.—Object to that as immaterial. What difference does it make?

The COURT.—He may answer.

Mr. KERR.—Exception.

Mr. ALLEN.—Do you recall? Can you find out from your record?

A. We drew on them at sight.

(Testimony of W. J. Nagus.)

Q. Does your record show the amount of the sight draft you drew?

A. Our ledger does, yes, sir. [434—383]

Q. Will you kindly take a look at your ledger?

A. These are the two invoices where they were copied.

Mr. ALLEN.—You identify this large book as the ledger of the Matheson & Heggler people, kept in their plant during 1908?

A. December, 1907, to December, 1908.

Q. Then would it include any entries of your office on the month of April, March, April or May, 1908?

A. All of the entries.

Q. You have opened this ledger at page 564 and indicated the third line thereof as being the entry of something indicated as "By at sight." What do you mean by that?

A. Well, when we made the shipment we drew on these people and gave them credit, and our bank gives us credit when we send them the draft.

Q. That, in other words, is the entry of the sight draft drawn by you against the Great Western Smelting & Refining Company?

A. Yes, we give them credit immediately that we drew on them.

Mr. ALLEN.—We offer in evidence that particular entry in this ledger, your Honor.

Mr. KERR.—Is that this gentleman's company's ledger?

Mr. ALLEN.—Yes, sir, it has been so identified.

The COURT.—That is identified as exhibit "41."

(Testimony of W. J. Nagus.)

Mr. ALLEN.—“41,” yes, sir. Page 564, the third entry from the top of the page. That, gentleman, reads as follows: I won’t pass this heavy book around.

Mr. SCHLESINGER.—Your Honor please, we object to the introduction of that ledger, or any part thereof, in evidence on the ground it is in no wise binding upon this defendant. If we can be held responsible for entries made in books in Illinois without our consent it is announcing a new rule of law unheard of. [435—384]

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

(Page 564 referred to, received in evidence and marked Plaintiff’s Exhibit “41.”)

Mr. ALLEN.—The third entry reads as follows: “April 16th”—the date of the book, as just testified, is 1908,—“By at sight, \$2,668.75, April 16th.”

Q. I call your attention to a memorandum that I hold in my hand, and see if you can identify that (showing same to witness)? A. Yes.

Q. What is that?

A. That is our notice of sight draft. That is billed with the invoice to the consignee, notifying them—

Q. That is a press copy, is it, of the original?

A. This is a letter copy of it, yes, sir, the same as of the invoice.

Mr. ALLEN.—We ask that be marked and offered in evidence, your Honor.

The COURT.—Exhibit “42.”



(Testimony of W. J. Nagus.)

Mr. ALLEN.—This is a bill—

Mr. SCHLESINGER.—Do I understand you offer the page of the Corder Company as well, or just the Great Western Smelting & Refining Company?

Mr. ALLEN.—The Great Western, that is all.

Mr. SCHLESINGER.—There are two pages.

(Pages referred to received in evidence and marked Plaintiff's Exhibit "42.")

Mr. ALLEN.—This page is all I wanted (showing.) This is, gentlemen, as follows: "Please address communications to the [436—385] company. April 16th, 1908. Great Western Smelting & Refining Company, Seattle, Washington. Matheson & Heggler Zinc Company, smelters of zinc and sulphuric acid, La Salle, Illinois. Dear Sirs: Addressed to the Great Western. Enclosed please find invoice amounting \$1,335.87, \$1,333.89, total of \$2,669.76, for which we drew at sight, order of the First National Bank, Chicago, with railroad freight receipt attached. Yours very truly, Matheson & Heggler Zinc Company."

Q. Going back to this, Mr. Nagus, you have for years kept in touch with the brokers who have hauled zinc from yourself and other plants, have you not? A. Yes, sir.

Q. And the price which they obtained from the United States Government, and other people, for the sale of zinc plate. State to the jury what was a fair and reasonable profit paid and allowed to brokers selling plate 6 by 12 by  $\frac{1}{2}$  inch to the United States Government with the range of your long experience

{Testimony of W. J. Nagus.)

at or about the month of April, 1908?

Mr. KERR.—We object to that, your Honor, on the ground it is incompetent and irrelevant, and he is not qualified.

The COURT.—I think he has shown qualifications. He may answer. This is a commission paid to brokers for selling the goods?

Mr. SCHLESINGER. — Commission paid to brokers, no time mentioned, no place mentioned, and we are not brokers. How can that be binding upon us, and no locality mentioned?

Mr. ALLEN.—I said brokers and others, your Honor.

The COURT.—It might effect some of the defendants.

Mr. SCHLESINGER.—We take an exception, your Honor.

The COURT.—Noted.

Mr. ALLEN.—Add “Any other brokers and others.” [437—386]

Mr. SCHLESINGER.—That addition makes it very indefinite. We renew our objection, that the words “and others” does not mean anything.

The COURT.—I think that makes it objectionable.

Mr. ALLEN.—Well, eliminate that.

Mr. SCHLESINGER.—We would like to have the name, India, Hindustan, or South Africa, some country, to have it part way definite.

The COURT.—Fix some place.

Mr. ALLEN.—In the zinc markets of the United

(Testimony of W. J. Nagus.)

States, confining yourself to that territory.

Mr. SCHLESINGER.—Same objection.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)—during the period on or about April 1st, 1908.

Mr. KERR.—We object as immaterial, incompetent and irrelevant, and that it is not shown this concern sold any zinc.

The COURT.—Note an exception.

A. The business of rolled zinc plates sold to the Government is handled usually on a contract basis—

Mr. SCHLESINGER.—We move to strike out that answer.

Mr. KERR.—Move to strike it as incompetent, irrelevant and immaterial.

The COURT.—The answer is stricken. The jury is instructed not to consider it at this time.

Mr. ALLEN.—Eliminate the explanation about how it is usually handled. Tell the profit.

Mr. ALLEN.—Read him the question again. (Question repeated.) I will frame it again.

Q. Mr. Nagus, from your long experience as a manufacturer of rolled zinc plate, and from your connection with the manufacturing end [438—387] of the business, did you have an opportunity to know and observe the profits made by brokers and by merchants who handled plate of that character?

A. Only on Government contracts.

Mr. SCHLESINGER.—Now, your Honor please, we move to strike that out. How does this man know the overhead expense of any particular mer-



(Testimony of W. J. Nagus.)

chant, how does he know it?

Q. (Question repeated.)

Mr. KERR.—Answer yes or no.

A. Not generally, no, I do not.

Mr. KERR.—I object to that on the ground it is incompetent, irrelevant and immaterial, what they consider. Who are “they”?

The COURT.—I think the objection must be sustained for the reason that it is apparent, under the conditions here, that the rule sought to be invoked here would not be fair, nor the one that would be applied.

Mr. ALLEN.—This witness has covered a period of many, many years in the manufacturing of zinc plate, and—

Mr. KERR.—If counsel has any questions to ask I submit counsel ask them, and not—

The COURT.—I have granted him permission to.

Mr. KERR.—I object to his arguing to the Court the qualification of this witness, or making any such statements before this jury.

Mr. ALLEN.—Mr. Kerr can’t do all the talking in this court.

Mr. KERR.—And it is improper.

Mr. ALLEN.—In that business, as he has testified, of which there is only a few of these in the United States, the two biggest ones, your Honor has heard the testimony, are in Illinois. They sell to brokers and merchants throughout the country. The United States Government, in its purchase of zinc, it does it [439—388] in nearly all cases by advertise-

(Testimony of W. J. Nagus.)

ment. They keep in touch with all the local trade all over the country who handle their particular commodity. I will tell your Honor, if you want me to go more fully into that, they always keep in touch with the prices obtained in the awards to the Government. He knows more about that particular part of it than the astute Mr. Goldberg, who sits here in the courtroom.

Mr. SCHLESINGER.—Your Honor, that is an improper statement, and he ought to withdraw it and apologize.

The COURT.—Yes, that is improper.

The COURT.—Yes, I think that should be stricken as to the defendants in the case.

Mr. ALLEN.—Does your Honor draw this distinction, then? You were going to permit me to ask the general question, and then when he was going to confine it to the Government sales, does your Honor hold that disqualifies him to advise the jury as to this particular kind of transaction?

On cross-examination said witness testified as follows:

Cross-examination.

By Mr. SCHLESINGER.—I don't think, after the cross-examination, he will pursue the inquiry.

Q. Mr. Nagus, I will show you a letter dated La Salle, Illinois, February 8th, 1908 (handing same to witness). Is that the letterhead of Matheson & Heggler Zinc Company?      A. Yes, sir.

Q. Do you recognize the signature at the bottom of that letter?      A. Yes.

(Testimony of W. J. Nagus.)

Q. Whose signature is it?

A. That was our manager at that time. [440—  
389]

Q. Your manager at that time?

A. That is my initial (showing).

Q. You dictated this letter? A. Yes, sir.

Q. And you are familiar with its contents?

A. I will have to read the letter to familiarize myself.

Mr. ALLEN.—Read it to yourself?

A. Yes, sir.

Mr. SCHLESINGER.—Does it speak the truth as you then conceived it to be, Mr. Nagus?

A. Yes, that letter is all right; that is what—

Q. Well, yes, you said that.

Mr. ALLEN.—May I see it?

Mr. SCHLESINGER.—Just a minute.

Q. I will call your attention also to a printed slip in the upper left-hand corner of that letter (showing).

A. Yes.

Q. Was that printed slip attached to that letter when you mailed it? A. I think so.

Q. Look at it and see.

A. It was customary to do that.

Q. It was customary?

A. Yes, it was customary.

Mr. SCHLESINGER.—Now, gentlemen, we will take pleasure in showing you the letter (handing same to attorneys for plaintiff).

(Paper referred to received in evidence and



(Testimony of W. J. Nagus.)

marked Defendants' Exhibit "H.")

Mr. SCHLESINGER.—“La Salle, February 8th, 1908. Great Western Smelting & Refining Company, 1924 Ninth Avenue, Seattle, Washington. Important. We beg to state that while we furnish [441—390] large quantities of sheet zinc, rolled zinc plate and spelter for the use of the Government, which have given the best of satisfaction, we have, on account of the exacting specifications, always declined to quote direct and must leave it to our customers to take the responsibility of goods being satisfactory to the Government. Matheson & Hegler Zinc Company.” Then follows this letter:

“Great Western Smelting & Refining Company. Gentlemen: We are to-day in receipt of inquiry from the United States Navy Department of your city requesting price on half, three-quarters and one inch rolled zinc plate 24 by 36, but, as you understand, it is not customary to quote *an* Government inquiries direct. We therefore wired referring them to you, and also telegraphed you accordingly as per enclosed copy. Our price today on the above plate, packed in 500 pound boxes, is \$600 per one hundred pounds. Freight on board La Salle, less five per cent f.o.b., less five per cent quantity discount on carload lots and three per cent for sight draft with B/L attached. The freight rate to your city in carload lots, 40,000, is \$1.25 per hundred pounds. We hope to be favored with your order and could make prompt shipment.”

Q. I will ask you this one question: In selling this zinc you didn't credit the Government, you credited

(Testimony of W. J. Nagus.)

the Great Western Smelting & Refining Company, did you not, or rather charged them with the account?

A. We had nothing to do with the Government.

Q. You had no dealings with the Government at all of any kind, nature or character with respect to this transaction?

A. We had no direct dealings with the Government; no, sir.

Q. You looked to the Great Western Smelting Company for your money?

A. Yes, sir. [442—391]

Q. And you have no arrangement with the Great Western Smelting Company as to what they should charge for their goods? A. Absolutely none.

Q. I will show you—shall I have it marked first?

The COURT.—Yes, Defendants' Exhibit "I."

Mr. ALLEN.—Just for identification?

Mr. SCHLESINGER.—Yes.

The COURT.—"I" is a telegram, is it?

Mr. ALLEN.—"I" is a telegram, yes, sir.

Mr. SCHLESINGER.—And if the Great Western Smelting Company had any disputes with the Government concerning this zinc that was a matter between the Great Western Smelting Company and the Government, and none of your concern?

A. Yes.

Q. I will show you a telegram dated February 8th, 1908, and ask you whether that was sent out by your concern in the due course of business (exhibiting same to witness)?

(Testimony of W. J. Nagus.)

A. I think it was. I would like to look up our files to answer that, but I believe that I sent that, although I would like, before stating absolutely, I would like to look at our correspondence.

Q. Certainly.

Mr. ALLEN.—Maybe I will admit it.

Mr. SCHLESINGER.—Have you the correspondence here?

Mr. ALLEN.—No, sir.

Mr. SCHLESINGER.—Well, we can't defer the trial for you to go back to Illinois.

Mr. ALLEN.—We will admit that.

Mr. SCHLESINGER.—To your best recollection—

A. Yes, sir, my recollection is that I sent that.

[443—392]

The COURT.—All right, admitted.

Mr. ALLEN.—Here is the original, as a matter of fact.

Mr. SCHLESINGER.—From our files, yes.

(Telegram referred to received in evidence and marked Defendants' Exhibit "I.")

Mr. SCHLESINGER.—“Great Western Smelting & Refining Company, 1924 Ninth Avenue, Seattle, Washington. Have inquiry from navy yard for plate half and one inch. Our price to you \$6 La Salle, usual discount, prompt shipment. Please quote Matheson & Heggler Zinc Company.”

A JUROR.—Do we understand this to be five per cent and three per cent cash?



(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—What is the fact about that?

A. Five per cent is a quantity discount in carload lots.

Q. F.o.b. La Salle five per cent discount in carload lots and three per cent for sight draft?

A. The price was subject to straight eight per cent discount.

Q. Well, that is what that invoice says. Then you make it five and three and call it eight?

A. Call it eight, yes.

Q. The five per cent is on account of the quantity?

A. Yes, sir.

Q. The three per cent is whether the quantity is large or small? A. Yes, regardless.

Q. I will now show you a letter, and have it marked, your Honor.

(Paper referred to marked Defendant's Exhibit "J" for identification.)

Q. I will now show you a letter dated March 16th, 1908, addressed to the Great Western Smelting & Refining Company, and signed by [444—393] your general manager. Was that letter sent out in due course of mail? A. Yes, sir.

Mr. ALLEN.—This has reference to that requisition for pig plate?

Mr. SCHLESINGER.—Yes. Omitting the caption, gentlemen: "Great Western Smelting & Refining Company, Seattle, Washington, March 16th, 1908. Your telegram of today's date is received specifying for 20,000 of rolled zinc plates, as fol-

(Testimony of W. J. Nagus.)

lows.” Then comes the specification of the plates.

Mr. ALLEN.—Well, give then the specification of the plates.

Mr. SCHLESINGER.—“5,000 pounds  $\frac{1}{2}$  by 24 by 28 inches; 5,000 pounds  $\frac{1}{2}$  by 24 by 26 inches; 5,000 one inch by 24 by 36 inches; 4,000 one inch by 24, by 48 inches. Referring to the last item will say that the largest we can furnish of one inch plate is 24 by 36, and we therefore telegraphed you accordingly, as per enclosed press copy, at the same time quoting you \$5.08 La Salle for the additional carload, less the usual discount. and your mention that we intend to allow this price to apply on present carload orders. We would add that in quoting prices on rolled zinc plates the same are always for prompt acceptance, excepting when same is contingent upon the awarding of contracts by the Government, and while we are able to give you a reduction in price on the present order, at times market may advance where the order is not placed promptly, owing to fluctuations in the spelter price. We await your reply with reference to one inch plates, and hope to be favored with your order for additional carloads.”

Q. What do you mean by the phrase here “owing to fluctuations in the spelter price”? What is spelter? A. Spelter is big zinc. [445—394]

Q. Spelter is pig zinc. Do you manufacture pig zinc? A. We do, yes.

Q. And the price of spelter, which was the basic material, those prices fluctuated from time to time?

A. Yes, sir.

(Testimony of W. J. Nagus.)

A JUROR.—There is no difference between half inch, and one inch, or two inches, it is all the same price?

A. The limit is one inch. We couldn't roll any—

Q. Well,—

A. There is no difference for one half or one inch.

(Paper referred to received in evidence and marked Defendants' Exhibit "J.")

Mr. SCHLESINGER.—I will show you a letter dated July 29th, 1908, marked Plaintiff's Exhibit "K" for identification. While we are having this marked, let me ask you this question: You were asked to bring with you from Illinois certain documents, were you not?

A. I don't exactly remember the phraseology of the subpoena, but—yes, to bring records in reference to the price at a certain time.

Q. Did you bring with you any of your letter-press copies of these letters?

A. They were in the hands of the Government.

Q. Did you bring with you any letter-press copies of these letters that I have read?

A. They are in the hands of the United States Government.

Q. Are they in this courtroom?

A. I haven't got them.

Q. How long has the Government had them, to your knowledge, letter-press [446—395] copies of these letters just given to this jury, how long has the Government had them?

A. Well, I can't answer that exactly. Some time.



(Testimony of W. J. Nagus.)

Some one came to our office sometime ago and got them; I couldn't give you the date.

Q. Were they given to the Government officials at the same time that you gave them these other ones introduced by the Government?

A. Everything they have got was given to them at one time, yes.

Q. You don't remember the name of the particular Government official that you handed them to, do you?

A. Why, I think I have a notation some place.

Q. Well, it is not important just now; simply want the fact. A. I didn't know the party.

Q. I will ask you to look at this letter dated July 29th.

The COURT.—That exhibit "J"?

Mr. SCHLESINGER.—Which is exhibit "K," your Honor, it is marked here (handing same to witness).

A. This is a letter from our office, although I didn't write this, my assistant wrote this.

Q. Is it your impression that letter was mailed in due course of business? A. Yes.

Mr. ALLEN.—Well, I don't know the possible connection that has with this matter. That is way along in July. If you explain to me what is about—

Mr. SCHLESINGER.—Well, I simply want to show, your Honor please, perhaps I can cover it all by one question, because I have a mass of correspondence here from them.

Q. Is it not a fact that the Great Western Smelting Company ordered from your concern, within a

(Testimony of W. J. Nagus.)

period of about two years preceding [447—396] May, 1908, exclusive of this present car, between four and six carloads of rolled zinc plate?

Mr. ALLEN.—Covering what period of time?

Mr. SCHLESINGER.—Two years.

A. I couldn't answer that.

Q. You can't, but you know very large quantities—

A. Yes, they bought from us considerable, but I don't recollect the carloads.

Q. Bought in carloads, half carloads and whole carloads. Now, I show you this letter dated October the 8th, 1907, and this will be the last that I will probably introduce on that subject.

(Paper referred to marked Plaintiff's Exhibit "I" for identification.)

Q. I will ask you to please look at that letter, Mr. Nagus, and state whether it was sent out from your concern in due course of business. A. Yes.

Q. And does that letter speak the truth as it then existed, to your knowledge?

A. Yes. It speaks the truth to my knowledge.

Mr. ALLEN.—I don't know *what is* for.

The COURT.—Let it go in.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "L.")

Mr. SCHLESINGER.—(Reading letter to jury.)

Mr. ALLEN.—That is along in October, 1907?

Mr. SCHLESINGER.—Yes, sir.

Q. You are manufacturers, are you not, of sheet zinc, sulphuric acid and smelters of spelter?

(Testimony of W. J. Nagus.)

A. Yes.

Q. You have no place of business in Seattle, have you? [448—397] A. No.

Q. Or anywhere on the Pacific Coast? A. No.

Q. You have this one factory? A. That is all.

Q. At La Salle, Illinois? A. Yes, sir.

Q. And you sell to the trade generally, do you not?

A. Yes, sir, to anyone that wishes to buy.

Q. By the way, are you a part of a combine or trust? A. No, sir; absolutely independent.

Q. I never heard anyone admit that even if it were so. I don't think that you are.

The COURT.—Proceed.

Mr. SCHLESINGER.—But what your particular profits are is a matter that concerns you, does it not, your particular profit in the matter of manufacture?

A. Yes, sir, I think so, that is right.

Q. Now, as a matter of fact, I am not going to go into this question of your profits because it would take too much time; it might be a Government inquiry, or something of that sort.

Mr. SCHLESINGER.—As a matter of fact, in selling to the Great Western Smelting Company at various times, did not your price, as shown by these letters, fluctuate?

A. Yes.

Q. From between six to \$7.40 per hundred pounds?

A. Yes, that is right.

Q. And, for all that you know, they might still fluctuate and become higher in the future, dependent upon trade conditions?



(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—So far as you know, without being able to dip [449—398] into the future, because you have no prophetic vision, they might still further fluctuate and become higher or lower as conditions warrant? A. Yes, sir.

Q. You are not able to say now, are you, with any degree of definiteness, what you will sell these plates for three months hence? A. No.

Q. In other words, as a man of common sense, you know that any business man might expect fluctuations in prices for merchandise? A. Yes.

Q. If there is an over-demand and a small supply prices raise, do they not? A. Yes.

Q. If there is a large supply and a small demand prices lower, do they not?

A. Generally speaking, yes.

Q. And isn't it just so, for instance, with the conditions of labor? A man is worth according to his particular efficiency, his salary perhaps being raised in accordance with his administrative efficiency, isn't that true? A. Yes, I—

Q. No doubt about that. I think that is all.

On redirect examination the said witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Nagus, if, on April 1st, or thereabouts, the Whiton Hardware Company of this city, a firm with an established credit, wealthy [450—399] concern, had asked you for a price on zinc of this particular kind you would have been willing and able

(Testimony of W. J. Nagus.)

to have sold to them, would you not?

A. We would.

Mr. ALLEN.—If the Seattle Hardware Company, one of the wealthy concerns of this city, had asked you for a price on zinc plate at or about April 1st, 1908, would you have been able to quote and deliver to them a car of zinc plate at the same figure as to Goldberg? A. Yes.

Q. In other words, Mr. Goldberg didn't have any exclusive monopoly in zinc plate in this northwestern country, did he? A. No.

Mr. ALLEN.—Calling your attention to a letter dated March 6, 1908, I will ask you if you can identify that letter (handing paper to witness).

A. Yes, we received that letter.

Mr. ALLEN.—This we ask the clerk to identify. I am going to offer it in evidence.

(Paper referred to marked Plaintiff's Exhibit "43" for identification.)

The COURT.—What date is that?

Mr. ALLEN.—March 6th, 1908. We now offer this in evidence, your Honor. It might properly have been part of the direct. There has been matters gone over in cross-examination. While they are examining this particular exhibit,—

Q. Now, tell the jury just exactly as regards your relation to the United States Government in the matter of bids and your relation to the different brokers and dealers over the country who from time to time handle your products. [451—400]

Mr. SCHLESINGER.—Well, now, if your Honor

(Testimony of W. J. Nagus.)

please, that is a double-barrelled question, and even if you separate it, it seems to me it is incompetent, irrelevant and immaterial and not binding—that question is absolutely immaterial, incompetent and not binding upon any one of the defendants, as to what their relations were with the Government. The Government has a right, as has been shown here, to buy direct from them, as it had bought from one of this concern's competitors at a previous time, but why they didn't sell is shown by the printed document.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Take an exception.

The COURT.—Noted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "43.")

Mr. ALLEN.—What was the rule, and what was the reason for it, that is the primary purpose of the question, what was the business rule of your particular establishment?

Mr. KERR.—That is not binding on the defendants.

Mr. ALLEN.—You offered evidence on that particular point.

Mr. KERR.—Oh, we haven't offered any evidence,—

The COURT.—Proceed.

Mr. KERR.—Exception.

A. Our position was strictly independent with all dealers. We left the matter in the hands of the dealers. That had been the policy of the company.



(Testimony of W. J. Nagus.)

Mr. ALLEN.—And you followed that policy when the Government made inquiries, you left it to the dealer?

A. Yes, we left it to the dealer, as we did in that case that come to us direct.

Mr. KERR.—I object to that as leading. What is the use of counsel [452—401] standing up here and testifying to the witness.

The COURT.—He has answered it.

Mr. ALLEN.—They put in three or four letters here—

The COURT.—Well, ask him about it.

Mr. ALLEN.—Mr. Nagus, they have here offered in evidence, or calling your attention to certain letters bearing upon the question that the Government had asked you with reference to the price on certain zinc plate. Did you in this instance follow the usual and customary rule of your office? A. Yes.

Mr. ALLEN.—This has been offered in evidence, gentlemen, and I will read it to you.

Mr. SCHLESINGER.—No objection.

Mr. ALLEN.—This is a letter of the Great Western Smelting & Refining Company of San Francisco. 1924 Ninth Avenue South, Seattle. March 6th, 1908. Addressed to Matheson & Heggler Zinc Company, La Salle, Illinois (reading same to jury).

Q. Did you receive, Mr. Nagus, on or about April 1st, 1908, did your office receive any inquiry from the navy yard office at Bremerton, or the Navy Pay Office in the city of Seattle, asking you to quote them any price on zinc plate at that time?

(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—I object to that upon the ground that his records are the best evidence.

The COURT.—He may answer if he knows.

Mr. SCHLESINGER.—If you know of your own knowledge.

A. We received one inquiry. I couldn't give you the date without looking up the correspondence.

Mr. ALLEN.—That is all. [453—402]

On recross-examination said witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Nagus, I will call your attention to a bill sent out by your firm to the Great Western Smelting & Refining Company in August of 1907 for 40,000 pounds of zinc plates at \$8. Is that the fact (exhibiting papers to witness)?

A. That is our invoice, yes.

Mr. SCHLESINGER.—We offer this in evidence.

The COURT.—Admitted.

(Paper referred to receive in evidence and marked Defendants' Exhibit "M.")

Mr. ALLEN.—Are you going to read that? Is that offered in evidence?

Mr. SCHLESINGER.—It is marked and offered in evidence.

The COURT.—Any objection?

Mr. ALLEN.—I did object to it, your Honor. I want to renew my objection it is entirely too far back. Of course, he has made a speech, but the jury and I would rather it would go in. I withdraw my objection.

(Testimony of W. J. Nagus.)

The COURT.—Very well.

Mr. SCHLESINGER.—I have no further questions.

(By Mr. KERR.)

Q. Did it cost your firm any more to manufacture these zinc plates in August, 1907, than it did in the month of April, 1907?

A. Do you mean the question of labor or the question of—

Q. I mean the actual cost of producing this zinc plate? A. Yes.

Q. What did the increased cost amount to, if any?

Mr. ALLEN.—I object as incompetent, immaterial and improper cross-examination. [445—403]

The COURT.—Objection sustained.

Mr. KERR.—Note an exception. That is all.

(By Mr. MORRIS.)

Q. Mr. Nagus, suppose that the Matheson & Hegler Zinc Company of La Salle, Illinois, had received an award from the Purchasing Paymaster of the Government at Seattle for a carload of zinc, or 50,000 pounds of zinc, and the time of delivery had been fixed at fifteen days after the date of the award, could your company have delivered to the Puget Sound Navy Yard at Bremerton said zinc within the period of fifteen days?

A. Well, that is hard to answer. I couldn't answer that question definitely. That would require an explanation.

Q. Sir?

A. That would require an explanation. I couldn't



(Testimony of W. J. Nagus.)

answer it definitely. That is possible, but I don't know whether—

Q. Is it not probable?      A. Hardly.

Q. Do you know?

A. We could furnish the material within three days, but I am not sure that you could get it here in the remaining twelve. It is possible. I believe we had a car in eleven days once.

Q. You had a car from La Salle to Seattle in eleven days?      A. That is my recollection.

Q. Yes, sir. Then if you had this zinc on hand in your factory, and you were required to deliver that from the factory to the navy yard at Bremerton within the period of fifteen days from receiving notice of your award, it is very probable that you would have been able to have made the delivery, if you had at other times made it in eleven? [455—404]      A. We wouldn't agree to do it; no, sir.

Q. Sir?

A. We would not have agreed to do it.

Q. I am not asking you what you would agree.

A. I wouldn't agree to do it, no, sir.

Mr. MORRIS.—Why not?

A. The time is too short.

Q. Why?

A. Why, we would be afraid to agree to it.

Q. Well, what is the reason, why?

A. Because, on an average, it would require more time.

Q. How much more?

A. Generally speaking, about three weeks.

(Testimony of W. J. Nagus.)

Q. How much?

A. Three, possibly four. Three weeks would be a minimum that we would expect, perhaps four.

Q. How did you happen to deliver the other car-load in eleven days?

A. Well, that was up to the railroad company, you understand. I said it was delivered in eleven days. My recollection is that the car got through one time—that we had a report it went through in eleven days. We didn't do that; the railroad company **did** that.

Q. The railroad company? A. Yes.

Q. Well, you would deliver this zinc by the railroad company in any event, would you not?

A. Yes.

Q. I am speaking about the railroad company delivering it from La Salle. If it was sent through it would be delivered within fifteen days, could it not?

A. That is possible.

Q. Sir? [456—405] A. That is possible.

Q. And you did make a delivery within eleven days by rail?

A. Well, that was the returns that we got, you know. I don't know of my own personal knowledge.

Q. You got returns it was delivered within eleven days? A. No.

Q. You are not questioning that return, are you?

A. No, I am not questioning it. I didn't pay any further attention to it.

Mr. MORRIS.—That is all.

By Mr. SCHLESINGER.—You want to save time

(Testimony of W. J. Nagus.)

and consent to this being put in evidence here (showing)?

Mr. ALLEN.—These are 1910, your Honor. No, I don't want to consent to those.

Mr. SCHLESINGER.—Very well.

(By Mr. ALLEN.)

Q. Mr. Nagus, if there were submitted to you a proposition of delivery to the navy yard in the city of Bremerton, a carload of zinc, the same to be delivered within five days after the award was made to you, and there was no carload of zinc of that character on the Pacific Coast, and the nearest is in Illinois, from your experience with shipping material do you think it would be possible for you to deliver that within five days from a point in Illinois?

A. No.

Q. Not unless you had the use of an aeroplane, or something of that sort?

A. Impossible from my experience. [457—406]

Mr. ALLEN.—That is all.

Mr. ALLEN.—May we take a notation from this ledger and let him take it?

Mr. SCHLESINGER.—Yes, let Mr. Nagus, because he is familiar with it. It is subject to our objection, your Honor, heretofore made.

Mr. ALLEN.—Will you copy that page for us, Mr. Nagus?

Mr. NAGUS.—You want the account? This is the debit and this is the credit here (showing). This is a folio, not a page.

Mr. ALLEN.—This part here offered in evidence



(Testimony of C. H. Howell.)

(showing.) We want both pages offered in evidence in the same way.

Mr. SCHLESINGER.—Anything that you want.  
[458—407]

**[Testimony of C. H. Howell, for Plaintiff.]**

C. H. HOWELL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Charles H. Howell. I am Assistant Cashier in the First National Bank in the city of Seattle; held that position a little over a year. In the year 1908 I was with the same bank in the capacity of receiving teller, and was such teller in April, 1908. I knew then a customer of the bank, Mr. Silverstone. He kept an account with said bank in the month of April, 1908.

Q. Referring to the records of your institution, checks and deposit slips, and the like, I will ask you whether or not he came to your bank on or about the first day of June, 1908, and made a deposit on that day, is that a fact? A. Yes, sir.

Q. I call your attention to this memorandum (showing same to witness). Can you identify that as a memorandum kept in your institution?

A. Yes, sir.

Q. What is that; state to the jury.

A. Deposit ticket, E. Silverstone, credit.

(Paper referred to marked Plaintiff's Exhibit "44" for identification.)

Q. Is that in the condition in which it was pre-

(Testimony of C. H. Howell.)

sented there at the window?      A. No.

Q. In what way was it presented, if you recall?

A. Well, it was presented originally with two checks, and I marked one off.

Mr. ALLEN.—We offer this at this time in evidence. [459—408]

Mr. SCHLESINGER.—We object to this on the ground it is incompetent, irrelevant, immaterial and not binding upon the defendants, and too remote in point of time.

The COURT.—That the deposit slip of the first of June.

Mr. ALLEN.—Objection overruled.

Mr. SCHLESINGER.—Note an exception.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "44.")

Mr. ALLEN.—This part of the slip which has a pencil drawn through both the second item and the balance originally, as I believe you stated, there was a second check presented by him, and that was crossed off by yourself?      A. Yes, sir.

Q. State to the jury just what conversation occurred between yourself and Mr. Silverstone at that time with reference to this matter. Just a moment until I get you the check.

Mr. SCHLESINGER.—We object to that upon the ground this calls for subsequent conversations, conversations occurring after the termination of the alleged conspiracy, and therefore in no wise binding upon any one of the defendants.

The COURT.—This is at the time of the deposit?

(Testimony of C. H. Howell.)

Mr. ALLEN.—Yes, sir.

The COURT.—Overruled.

Mr. SCHLESINGER.—After the 26th of May.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Noted.

Mr. ALLEN.—I call your attention to the check, which is a part of Plaintiff's Exhibit Number "5," being a check signed by Robert [460—409] H. Orr, and payable to the Fowler Metal Company, or order. Calling your attention particularly to the endorsement on the back, can you recall what conversation took place, or the substance?

A. I can't recall it, no.

Mr. SCHLESINGER.—The same objection, your Honor please, to all this line of testimony.

The COURT.—Same ruling and exception.

Mr. ALLEN.—Do you recall as to the fact that there was some disagreement with reference to the endorsement at that time between you?

Mr. SCHLESINGER.—Exception.

A. I can't recall definitely on that question, no.

Mr. ALLEN.—You can't recall definitely?

A. No.

Q. But there was some conversation at that time between yourself and Mr. Silverstone?

A. Yes. The check was given back to Silverstone by me for some reason, and my impressions is it was on account of there was no official endorsement on the back of the item. I can't—



(Testimony of C. H. Howell.)

Q. But it was turned back at that time when it was first presented?

A. Yes, that would be very natural.

Q. Was this check afterwards presented for payment, or was it deposited in regular course in your institution?      A. Yes, sir.

Q. By whom?

Mr. SCHLESINGER.—The same objection, your Honor please, to all this line of testimony.

The COURT.—Overruled.

Mr. SCHLESINGER.—Same exception. [461—410]

Mr. ALLEN.—By Mr. Silverstone, sitting there in the courtroom (showing)?

A. Yes, sir.

Q. Have you the deposit slip which shows that deposit?      A. Yes, sir.

Mr. VANDERVEER.—I would like to object to this on the ground Mr. Silverstone's acts in this matter are immaterial and irrelevant, for the reason that Mr. Silverstone at this time is proven not to have been a conspirator, and hence his acts cannot be overt acts. Overt acts, to be such, must be acts of a conspirator.

The COURT.—Overruled.

Mr. SCHLESINGER.—And in furtherance of a conspiracy.

The COURT.—The testimony would be properly admissible as against defendant Goldberg.

Mr. SCHLESINGER.—It would not be admissible against him?

(Testimony of C. H. Howell.)

The COURT.—It would be.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—We offer that in evidence, now, gentlemen, that slip.

Mr. SCHLESINGER.—Same objection, same ruling, and same exception?

The COURT.—Yes.

Mr. ALLEN.—We offer that in evidence.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "45.")

Mr. ALLEN.—That, gentlemen, is a second deposit made June 2, 1908.

Q. Referring again to that check of Mr. Orr, payable to the Fowler Metal Company, which you hold in your hand, can you ascertain or tell me from the records of the institution as to whether or not any sum of money was ever abstracted from Mr. Silverstone's account in that identical sum? To refresh your memory I call your attention to this particular check I hold in my hand [462—411] (showing same to witness).

A. Our records indicate the next day it was drawn out.

Q. The next day it was drawn out? A. Yes.

Q. I will call your attention to any stamp of your bank on that.

A. It indicates it was paid through the clearing house on June 2d.

Q. On June 2d, 1908?

Mr. ALLEN.—We offer that in evidence, first marking it for identification.

(Testimony of C. H. Howell.)

The CLERK.—That is exhibit “36,” admitted yesterday.

Mr. ALLEN.—I don’t know whether the jury saw this check of Mr. Silverstone’s or not.

Q. That, then, was charged on June 2d and paid out of the account of Mr. E. Silverstone, is that true?

A. Yes, sir.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER.—No questions.

Mr. ALLEN.—Might we, with consent of counsel, substitute certified copies for the deposit slips? They are the property of the bank.

Mr. SCHLESINGER.—You will make the comparison.

Mr. ALLEN.—Or Mr. House.

The COURT.—Let it go in the record.

Mr. ALLEN.—For these two deposit slips.

The COURT.—“44” and “45.”

Mr. ALLEN.—“44” and “45,” which are the original deposit slips kept in that bank, that substitutes therefor are to be permitted and to be personally examined by Mr. House or myself first, by stipulation of counsel for defendants. [463—412]

**[Testimony of R. S. Walker, for Plaintiff.]**

R. S. WALKER, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

**Direct Examination.**

My full name is Robert S. Walker. I am Assistant Cashier of The National Bank of Commerce in this city of Seattle, and have been connected with



(Testimony of R. S. Walker.)

that institution since 1899, and was with said bank in 1908. The Great Western Smelting & Refining Company and Emar Goldberg kept accounts at said bank during that year.

Q. Calling your attention to the deposit slip, which I hold in my hand, I will ask you whether you can identify that, Mr. Walker? (Exhibiting same to witness.) A. Yes, sir, I can.

(Witness continuing.) It is a deposit slip showing credit to the Great Western Smelting & Refining Company.

Mr. ALLEN.—It is offered in evidence. It comes from the original files in your bank?

A. Yes, sir.

Mr. ALLEN.—A deposit slip of June 1st, 1908, Plaintiff's Exhibit "46."

Mr. SCHLESINGER.—No objection.

The COURT.—It may be admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "46.")

Mr. ALLEN.—I will ask you first to state what is the meaning of that slip. The jury probably understand perfectly, but so as to make the record complete.

A. Well, it is a deposit ticket showing a credit of \$7,448.29 to the credit of the Great Western Smelting & Refining Company, and [464—413] it is made up of two items, one of \$7,417.09, which was a check drawn on the First National Bank.

Mr. ALLEN.—A check of what?

A. \$7,417.09 drawn on the First National Bank of

(Testimony of R. S. Walker.)

Seattle, and an item of \$31.20, which was drawn on some point out of the city.

Q. That is shown by the record of the slip itself?

A. Yes, sir.

Q. I ask you to identify the memorandum which I hold in my hand, if you can (exhibiting same to witness).

A. This is a deposit ticket dated June 2d, the year is not on here, showing a credit of \$1,479.60 to the credit of the Great Western Smelting & Refining Company.

Q. Can you, by reference to that memorandum as taken from your files in your bank, and the year, and the time on which it was filed, and by reference to your books, can you tell the year?

A. Yes, sir, I can.

Q. What was the year?      A. 1908.

Q. Now, what—

Mr. ALLEN.—Now, calling your attention to this memorandum which I hold in my hand (giving same to witness).

A. That is a deposit ticket of June 1st, 1908, showing a credit of \$710 to the account of Emar Goldberg.

Q. And while the clerk is marking that I ask you to identify this other (handing paper to witness).

A. This is a similar deposit ticket dated June 2d, 1908, showing a credit of \$2,109.60 to the account of Emar Goldberg.

Q. To his personal account. The deposit slip of June 1st, 1908, showing two items, one for \$210, another for \$500, a total of \$710, deposited by Emar

(Testimony of R. S. Walker.)

Goldberg, that is number "48." Now, [465—414] "49," we will let counsel take a look at that.

Mr. SCHLESINGER.—No objection.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "49.")

Mr. ALLEN.—That is a deposit of Emar Goldberg, \$2,109.60, Plaintiff's Exhibit Number "49," now admitted by stipulation. This is "47" (showing). It is a deposit slip in the name of Great Western Smelting & Refining Company in the sum of \$1,479.60 of June 2d, 1908.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "47.")

Q. Mr. Walker, will you kindly step down here a moment and refer to this ledger and the debits and credit items on this ledger. We will read, with your Honor's permission, into the record the items of this ledger.

Mr. SCHLESINGER.—We consent to that, subject to the general objection to its relevancy.

Mr. ALLEN.—Read the items; show the page of the ledger and date.

A. Just what do you want, the transaction beginning on June 1st, 1908?

Q. The item, so as to identify these items.

A. Well, the ledger shows a credit on June 1st, 1908, to the account of Great Western Smelting & Refining Company of \$7,448.29. And on the same day—

Q. What are the items on the deposit?



(Testimony of R. S. Walker.)

A. Well, I would have to take that from the ticket, from the deposit slip.

Q. The deposit slips I just showed you, they do correspond to that?      A. Yes, sir.

Q. That is the correct amount; in other words, that shows the [466—415] correct amount of these deposit slips, is that right, if it does check?      A. Yes.

Q. In other words, the ledger checks with these deposit slips you were just shown?

A. Yes, the credit on the ledger agrees with this account.

Q. Does it, in a general way, does the ledger agree with the other deposit slips which I have just shown you and which are admitted?

A. Yes, sir, with all of those.

Q. Those were charged to the credit of Mr. Goldberg and the Great Western Smelting & Refining Company in the exact amounts and the time as shown by the deposit slips heretofore identified, that right?

A. Yes, sir.

Mr. ALLEN.—Mr. Walker wants to correct the record. He was with the old bank that preceded the National Bank of Commerce; he was with the same institution, but it merged, and he didn't want any misunderstanding.

Q. Emar Goldberg's account in this ledger is identical as regards the amount as just identified by these deposit slips a moment ago?

A. Yes, sir, I have checked that.

Q. It does agree exactly?

A. I checked that last night, yes, sir.

(Testimony of R. S. Walker.)

Q. Do you want these deposit slips back?

A. I would like to have the originals.

Mr. ALLEN.—Here are the copies. I have marked them. We would like to offer in evidence a copy of that ledger record. Mr. Walker says it is right. Have you any objections? [467—416]

Mr. SCHLESINGER.—No.

Mr. ALLEN.—We offer them in evidence, those two sheets, by stipulation of counsel.

(Papers referred to received in evidence and marked Plaintiff's Exhibits "50" and "51," respectively.)

The COURT.—What are they?

Mr. RIDDELL.—Ledger sheets in National Bank of Commerce. "50" is the account of whom?

The CLERK.—Account of Great Western Smelting & Refining Company.

Mr. RIDDELL.—"51" is the account of Emar Goldberg. [468—417]

**[Testimony of E. K. Riley, for Plaintiff.]**

E. K. RILEY, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My full name is E. K. Riley. I live at 24 Smith Street, Seattle, and have resided there eleven years. I am the Auditor at the Seattle National Bank. In 1908 my occupation was that of Auditor with the Puget Sound National Bank. I have brought with me the records and accounts of the Seattle National

(Testimony of E. K. Riley.)

Bank for 1908. There was an account kept at said bank in 1908 in the name of Robert H. Orr, Paymaster United States Navy.

Q. I call your attention to a part of Plaintiff's Exhibit Number "5," being the first part thereof, a check (exhibiting same to witness). I will ask you whether or not, from the records and books of that bank, that check was, in due course of business, cashed and charged against the account of Paymaster Orr of the United States Navy, being a part of the Government funds of the United States?

Mr. SCHLESINGER.—Object to that as being immaterial, irrelevant and incompetent. Check speaks for itself.

The COURT.—He may answer.

Mr. SCHLESINGER.—Note an exception.

(Witness continuing.) A check of this amount was paid against Paymaster Orr on account of June 2d, 1908, and charged against the funds there in his hands as Paymaster.

Q. Take a look at the endorsement. That is a photographic copy; I have spoken to you, Mr. Riley, of the original check. Those *stamps in* accord with the stamp in use at the bank at that time, were they?

A. This check had been deposited in the First National Bank. And was cleared on the Seattle National Bank on June 2d, 1908. The said data was charged to the funds in the hands of Mr. Orr [469—418] on the books of the Seattle National Bank. The ledger of the bank shows that on June 2d, 1908, that said sum was charged against Mr. Orr's account



(Testimony of E. K. Riley.)

on that day. \$7,417.09 is charged against Robert H. Orr, Paymaster, on June 2d. On June 2d, 1908, a debit in the sum of one of the items is \$7,417.09, was charged against the account of Robert H. Orr, Paymaster. "Pay" stands for Paymaster. That check would be forwarded back by the bank at the end of the month to the Government. They were sent back to the Government, sent back to the supervisor; that is a Government rule.

Mr. ALLEN.—We offer in evidence this page of the ledger, that part of the ledger which has just been identified by the witness—is there any page to it so you can—

A. No.

Q. You might make out a little memorandum transcript? A. Yes, sir.

The COURT.—What page of the ledger?

Mr. ALLEN.—There is no page given, your Honor. It is under the head of "Orr."

A. Government account.

Q. Government accounts, volume—

A. There is no number on that.

Q. There is no number on that. A ledger in use in 1908, and under the head of Orr, Robert H. Orr, with the designation "Pay" after it, under the Government account.

Mr. ALLEN.—That is all.

On cross-examination by Mr. SCHLESINGER said witness testified as follows:

Q. You do not know when the particular check

(Testimony of E. K. Riley.)

referred to was delivered, do you, in point of time?  
[470—419]

A. Well, I don't just get that.

Q. See if I can't make it plainer. I will withdraw that question. Do you know Mr. Kettlewell?

A. I do not.

Q. Do you know when it was that the Navy Pay Office delivered that check to any person, first delivered it? A. I do not.

Q. All that you know is that at some time that check came through the clearing-house into this bank? A. Yes, sir.

Q. And this reference you have made is simply as to the time of the reception of this check by your bank? A. Yes, sir.

Q. You were not concerned with the usual, with the prior travels of the check, were you?

A. Not a bit.

Q. Or the prior deliveries of the check, were you?

A. No, sir.

Q. You were not concerned with the question of the termination of any transaction with the Government covered by this check, were you?

A. Only as to the payment of the check.

Q. That is, you mean—

A. See endorsements are in proper order.

Q. You mean the ultimate reception of the check by your bank? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

The said witness on redirect examination by Mr. ALLEN testified as follows: [471—420]

(Testimony of E. K. Riley.)

Q. In other words, it was paid, though, on June 2d, under the records of your bank, it is paid and charged against the funds of the United States Government on June 2d, 1908, by the records of the bank, isn't that true? A. Yes, sir.

Mr. ALLEN.—That is all.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Through how many hands that check went, or who first received the check, you have no concern?

A. No, that doesn't make any difference to us.

Q. In other words, a check might have been outstanding for one year, that wouldn't concern you; you are simply concerned with the time it ultimately reaches your bank? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—That check is never paid until it is accepted at your bank and charged upon the books of the account? A. Yes.

Mr. SCHLESINGER.—You don't mean to say other banks wouldn't use that check or pay the money on it before it reached your bank, do you, that you don't mean?

A. That is up to them.

Mr. ALLEN.—But it is paid on the books of your bank June 2d, 1908?

A. Yes, sir.

Mr. SCHLESINGER.—You received no notice not to pay that check from the Government?

A. Have no record of it. [472—421]

Mr. ALLEN.—Mr. Riley, will you make a tran-



(Testimony of E. K. Riley.)

script of this particular part of that memorandum so we can offer it in evidence? By stipulation of counsel, your Honor, that can be done.

Mr. SCHLESINGER.—Yes, objecting, of course, as to the competency of it and materiality, but permitting you to make a copy of the abstract.

The COURT.—The stipulation is a copy may be substituted for the original.

Mr. SCHLESINGER.—Very well.

The COURT.—That will be marked “52.”

(Paper referred to, copy to be substituted, received in evidence and marked Plaintiff’s Exhibit “52.”) [473—422]

**[Testimony of John Flaherty, for Plaintiff.]**

JOHN FLAHERTY, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My occupation is that of general yard master for the Northern Pacific. In the year 1908 my occupation was that of assistant yard master of said Northern Pacific Railway Company. I have in my possession certain data with reference to the movement of cars that come into the yard, and have data with reference to the movement of a car number 41,912.

Q. I wish you would take a look at your memorandum. We offer for identification this memorandum—that sheet over there—it is a sheet—ruled sheet which has no title or designation at the top.

(Testimony of John Flaherty.)

I cannot identify it more particularly at this time.

A. Form 1496.

Mr. ALLEN.—Can you from this sheet trace the record of that particular car?

A. Yes, sir.

Q. 41,912? A. 41,912.

Mr. ALLEN.—We offer this in evidence, gentlemen. Do you object?

Mr. SCHLESINGER.—If you say it is all right, it is all right.

(Instrument referred to received in evidence and marked Plaintiff's Exhibit "53.")

(Witness continuing.) My record shows with reference to the movement of car 41,912, a carload of zinc for the Shore Line. It was weighed and sent to the Great Western Smelting & Refining Company, set off at the Great Western Smelting & Refining Company. I hold in my hand a weight certificate that was taken here. [474—423]

Mr. ALLEN.—We offer that in evidence. That has been offered in evidence by stipulation of counsel.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "54.")

Mr. ALLEN.—(Reading same to the jury.) 4/27/08. What do these figures 4/27/08 mean?

A. That is the month and the day of the month.

Q. That would mean April 27, 1908, is that right?

A. Yes, sir.

Q. Mr. Flaherty, what was the next movement of

(Testimony of John Flaherty.)

this car? It went to the Great Western, and then what happened to it?

A. On May 5th received an order from the Great Western Smelting & Refining Company—

A JUROR.—Can't hear you.

Mr. ALLEN.—He says on May 5th they received an order from the Great Western Smelting & Refining Company. To do what?

A. To take the car to the Union Oil Company's dock.

Q. To take the car to the Union Oil Company's dock. Tell the date, tell what movement happened, and tell the date of the movement of that car?

A. We received this order at 11:30 A. M.

Q. Where does that show on there?

A. 11:30 A. M., May the 5th, here (showing). Here is the car number, carload of zinc (showing).

Mr. ALLEN.—We offer for identification this page.

The COURT.—Exhibit "55." Page in what book?

Mr. ALLEN.—This is orders number 5, May, 1908, number 37, your Honor, of the Northern Pacific.

The COURT.—Page what? [475—424]

Mr. ALLEN.—Page 12 of that record.

The COURT.—Page 12 of order.

Mr. ALLEN.—Volume 37.

The COURT.—19th of May?

Mr. ALLEN.—Yes, May, 1908, on the back of the book. We offer this in evidence, gentlemen.

Mr. KERR.—We have no objection.



(Testimony of John Flaherty.)

The COURT.—Admitted.

(Instrument referred to received in evidence and marked Plaintiff's Exhibit "55.")

Mr. ALLEN.—This is a number, 49,912, zinc. G. W. S. & R., which he has testified is Great Western Smelting & Refining Company, 11:30—I don't know whether that is midnight or—

A. A. M.

Q. What does U. O. C. Dock mean?

A. Union Oil Company Dock.

Q. Was that car then moved according to that record? A. Yes, sir.

Q. Have you any further record of that car at hand?

A. Well, on this page the car was afterwards loaded with flour by the Centennial Mill Company for Pier 14, *all it is here*. "Flr." stands for flour.

Mr. ALLEN.—We offer that item. That shows, then, that on the 14th at least that the car was empty, is that true?

A. Yes, it was loaded at the Centennial Mill.

Q. That means it was reloaded for something else?

A. Yes.

The COURT.—Is that the same exhibit?

Mr. ALLEN.—Yes. That is all. [476—425]

On cross-examination by Mr. MORRIS said witness testified as follows:

Mr. MORRIS.—Will you kindly hand me the exhibit that shows the number of the exhibit you had, the one that shows the destination of this car?

The COURT.—That is "53."

(Testimony of John Flaherty.)

Mr. ALLEN.—Here it is, that is the first movement of the car.

Mr. MORRIS.—Mr. Flaherty, I now hand you Plaintiff's Exhibit "53," and I wish you would state to this jury, if you can, from where that car was shipped?

A. I am unable to say where the car originated.

Q. Have you any record in your possession that shows how long that car was on the road after it was started?     A. No, I haven't it at hand.

Q. Sir?

A. I haven't it in hand, but I can get it.

Q. Will you kindly get it and bring it into this court?     A. I will try, sir, yes, sir.

Q. Maybe you have knowledge of the number of days that that car was en transit from La Salle, Illinois, to the city of Seattle. Have you that knowledge with you in your possession at this time?

A. No, sir.

Mr. MORRIS.—It is agreed that the record in this case may show—

The COURT.—Agreed that this car 41,912 was transported from the place of its origin to Seattle in eleven days.

Mr. MORRIS.—In eleven days, yes, sir.

Mr. ALLEN.—There was a breakdown, or something, and the car was changed. This car as it reached here was a different number, but it arrived here in eleven days. [477—426]

Mr. MORRIS.—The point I want to get here, this particular zinc mentioned in this indictment was

(Testimony of John Flaherty.)

started at La Salle, Illinois, and arrived in Seattle in eleven days?

Mr. ALLEN.—That is right.

The COURT.—I understand that is right?

Mr. ALLEN.—Yes, that is right.

Mr. ALLEN.—(Continuing.) The Government at this time desires to make this motion—your Honor is familiar with the situation. The Government at this time desires to dismiss this action as to Mr. Silverstone.

By the COURT.—Motion granted. Let an order be entered discharging the defendant, Silverstone, without bond.

**[Testimony of John S. Howell, for Plaintiff.]**

JOHN S. HOWELL, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is John S. Howell. I am manager of the Star Steamship Company. In the spring of the year 1908 I was in the steamboat business; that is, I was working for the steamboat business, but not in the Star Steamship Company. At this time I am the manager for the Star Steamship Company and properly in possession of their records. I have one of the record books of the company.

Q. About May 9, 1908, shipment on the steamer "Fidalgo." Can you identify that as a part of the record of your concern?

A. Yes, sir. [478—427]



(Testimony of John S. Howell.)

Mr. ALLEN.—Mark that as Plaintiff's Exhibit "56." This is from the Star Steamship Company's records number 1063, and dated May 9, 1908, No. 56.

(Whereupon Plaintiff's Exhibit 56 was introduced in evidence and read to the jury by Mr. Allen.)

(Witness continuing.) This is the duplicate; this white sheet is the original. The carbon copy put down when a bill is made to any firm for freight hauled. This remains as our witness. This means that there was 160 boxes of zinc taken out of M. P. car number 41,912, from the Union Oil dock to Bremerton—from Seattle to Bremerton. It was taken to Bremerton and delivered to Bremerton, and the weight of this shipment was 81,086. This is some junk scrap which went from the Alaska Junk Company, of 100,000 pounds, and this came from off the steamer "Watson." The boxes all weighed 81,086 pounds.

Mr. SCHLESINGER.—No questions.

[Testimony of **A. R. McNeil**, for Plaintiff  
(Recalled).]

A. R. McNEIL, recalled, testified as follows on behalf of the plaintiff:

Direct Examination by Mr. ALLEN.

I have been sworn. A red tag system was installed in the Storekeeper's office at Bremerton during the year 1908, when Mr. Barnes came there.

Q. State to the jury what the fact was in reference to the use of any alarm signal, or similar signal, in use prior to that time. [479—428]

(Testimony of A. R. McNeil.)

Mr. MORRIS.—We object to this on the ground that it is a matter that was introduced in chief by the District Attorney. It was started yesterday after my cross-examination of this witness, and asked this question. I objected to it on the ground that it was not redirect examination. The counsel for the Government then requested that the Court permit him to go into this matter in chief. The gentleman went into the matter in chief; this witness answered questions on that subject, and I cross-examined him thereon, as I had a right to do, and he answered that these red signal tags or danger tags, or some tags of that kind, were inaugurated after Mr. Barnes entered the employ of the Government. Now, I respectfully submit it was the Government's case in chief. This witness has answered, and they have no legal right to impeach or discredit their own witness.

By the COURT.—OBJECTION OVERRULED. EXCEPTION ALLOWED.

A. Before Mr. Barnes came there was no regular system in force, putting danger tags for signals on the papers, except that a man would put his own tag on and write "urgent" across the face of it. It was not there before Mr. Spear came there. It was enforced then.

Q. This other white system of tags, whatever it was, was in use prior to that time? How long prior to that time?

A. I have seen those tags used—there was no other system. A man could use that tag if he so desired, pick up a piece of paper from his desk, write

(Testimony of A. R. McNeil.)

“urgent” across the face of it, and put it on. That was in use there during the time that Mr. Spear was Paymaster—prior to the time that the red tag system was used. [480—429]

On cross-examination by Mr. MORRIS the witness testified as follows:

Q. You say there was no regular system at the time at which you refer to?

A. No regular system; no.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Did you have any other alarm system in Mr. Kettlewell's office, burglary alarms or otherwise?

A. I wasn't in Mr. Kettlewell's office.

**[Testimony of A. W. Graeff, for Plaintiff.]**

A. W. GRAEFF, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is A. W. Graeff. My occupation at the present time is that of a rancher. I live about two miles from South Park—south limits of the city. In the year 1908 I was employed at the Puget Sound Navy Yard at Bremerton, Washington. In the month of April and May, 1908, I was wharfinger. I can identify this book. That is a record of the freight received at the Puget Sound Navy Yard during May, 1908.

Mr. ALLEN.—Identify this page 118. Any objection?



(Testimony of A. W. Graeff.)

Mr. SCHLESINGER.—The only objection is it refers to scrap iron [481—430] and other materials not involved here and incumbering the record. Otherwise we don't object.

The COURT.—Admitted.

(Whereupon said page 118 of said record was introduced in evidence and marked Plaintiff's Exhibit "57.")

(Witness continuing.) The last item under the figure "9" means that is the 9th day of the month. It stood for Naval Supply Fund. C. S. stands for cases—that is in my handwriting. The figures 438 at the right-hand side, under the head of "R. E. Q." in the column of requisitions are supposed to stand for the number of requisitions for which this material was supplied. That is the number, probably, I took off from the cases. I was receiving there for the Naval Yard authorities. [482—431]

**[Testimony of Ben U. Slyster, for Plaintiff.]**

BEN U. SLYSTER, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Ben U. Slyster. I am a salesman for Schwabacher Hardware Company, and was employed by said concern in the year 1908 in the capacity of salesman.

Q. I call your attention to the part of Plaintiff's Exhibit Number "7," same being a proposal for supplies, or receipts, heretofore entered in evidence,

(Testimony of Ben U. Slyster.)

and ask you if you can identify that stamp or any part of the requisition.

A. Well, I used similar stamps.

(Witness continuing.) I recognize, at that time, that I was using a similar stamp.

Q. It bears there the impression, "Unable To Supply, Schwabacher Hardware Company." Tell the jury what you mean by that stamp, when you use it in your business there in the store?

A. We haven't the material on hand.

Q. It means they haven't the material on hand. Calling your notice particularly to the number of days within which to be supplied, of five, for a quantity of fifty thousand pounds of zinc, which is equivalent to a car of zinc, was Schwabacher Hardware Company unable to furnish that quantity of zinc within five days?

Mr. SCHLESINGER.—Doesn't that paper so indicate?

Q. I want him to explain what this does indicate.

A. Well, we don't carry zinc in this shape. We don't stock it in this shape. We stock it in sheets.

Q. This is for small sheets. That is small plates?  
[483—432]

A. Well, it would be  $1\frac{1}{2}$ x12x6.

Q. The Schwabacher Hardware Company were unable to supply these?

Mr. SCHLESINGER.—That is leading. He has already given his answer. I object to the question on the ground it is leading.

By the COURT.—I think it has been answered.

(Testimony of Ben U. Slyster.)

Q. Was or was not the Schwabacher Hardware Company unable to bid on this proposal, on the time and the quantity of material?

Mr. SCHLESINGER.—I object to that on the ground it has been asked and answered.

By the COURT.—Well, let him answer it again. **OBJECTION OVERRULED: EXCEPTION ALLOWED.**

A. But we didn't have the material and couldn't supply it.

Q. Couldn't get it in that time, is that it?

Mr. SCHLESINGER.—I object to that upon the ground it is leading.

By the COURT.—Let the witness state the facts.

Q. What was the fact, then, about the inability?

Mr. SCHLESINGER.—We also object upon the ground he has already answered the question fully, twice, that they didn't deal in that kind of material.

Mr. ALLEN.—He said they didn't carry it in stock.

By the COURT.—Let him answer. **Objection overruled: exception allowed.**

A. I didn't get your last question.

Q. (Question read.) A car of zinc in that character?

A. Couldn't get the supply from the mill in that time; no.

Q. What was the business of the Schwabacher Hardware Company in the year 1908?

A. Selling hardware and metals.

Q. Hardware and metals. Did that include whole-



(Testimony of Ben U. Slyster.)

sale and retail, in that kind of business? [484—433]

A. Retail none, not in the general term of the word.

Q. Generally a wholesale business?

A. Generally speaking.

Q. Do you know from an examination—from your own experience in life—you have put in bids to the Navy Department, as a matter of fact, your concern has, has it not? A. They have.

Q. Do you know, from your experience as a salesman, what is the usual and reasonable profit during the year 1908, in the Spring, in the month of April or May, what would be a reasonable profit for the sale of metal, similar to the kind described in these former questions, that is fifty thousand pounds of rolled zinc, to be delivered to the Navy Yard?

Mr. SCHLESINGER.—I object to that upon the same grounds and for the same reasons as objections made to the last question.

By the COURT.—I think this question of reasonable profit is an element upon which testimony should properly be received.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. You understand the question now?

A. I understand the question.

Q. What would you answer to that question?

A. A salesman doesn't get the exact cost, nor the cost of doing business. He gets his prices from the Sales Department, and quotes those.

Q. Aren't you familiar with your prices in the

(Testimony of Ben U. Slyster.)

Sales Department? A. Sir?

Q. Are you familiar with the prices in the Sales Department?

Mr. SCHLESINGER.—I object to that as calling for his understanding.

By the COURT.—Let him answer this question. If he is able to answer, all right; if not, let him pass it. [485—434]

[**Testimony of Hiram S. House, for Plaintiff.**]

HIRAM S. HOUSE, a witness produced on behalf of the plaintiff having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Hiram S. House. I have been sworn. My official residence is Stanbarry, Mo. I am expert bank accountant for the Department of Justice, and am so officially designated. In that capacity I served under written authority under commission of the United States Commission at Washington. I have the commission with me.

Mr. ALLEN.—We want the record to show particularly as connecting up this evidence, that we offered this commission in evidence.

Mr. SCHLESINGER.—We object to it upon the ground it is incompetent, irrelevant and immaterial, no issue at all. We don't question his appointment; we don't question his competency.

The COURT.—Let it be filed. I don't see its materiality at all.

Mr. ALLEN.—We ask permission to substitute a

(Testimony of Hiram S. House.)

certified copy of it. By stipulation of counsel there is no objection to withdrawing that and substituting a copy.

(Whereupon said commission was introduced in evidence and marked Plaintiff's Exhibit "58" and read to the jury by Mr. Allen.)

Mr. SCHLESINGER.—(During reading of exhibit "58" to the jury.) We object to that as being entirely improper, as for the purpose stated in that photographic document, and we assign the remark of counsel as misconduct.

Mr. ALLEN.—I am reading from this exhibit.  
[486—435]

Mr. KERR.—We ask the Court to instruct the jury to disregard it.

By the COURT.—This commission that has been read here seems to be for the purpose of reading the qualifications of Mr. House as an expert, and the fact that he is authorized by the Department of Justice to collect testimony in this case or any other doesn't, of itself, furnish any evidence in this case, or is not to be considered as evidence against the defendant.

Q. Acting under and by authority of that commission, Mr. House, you have time after time, and day after day, patiently collected from the files of the United States Navy Department, at Bremerton, and from the Navy Pay Office, in Seattle, and from the books of Mr. Corder and the Great Western Smelting & Refining Company, in the city of Seattle, and elsewhere, certain instruments and documents, which have remained in your possession for some time, is



(Testimony of Hiram S. House.)

that true? A. Yes, sir.

Q. Have each and all of those documents, heretofore offered in evidence—some of which have not, possibly, been offered in evidence,—have they all remained in the same condition, barring reasonable wear and tear in handling them, in which they were when you received them from the original files?

A. You refer now to the records which I got from the Yard and from the Navy Pay Office?

Q. Yes, sir and from Corder's books and the Great Western Smelting & Refining Company's books, as well, any of these exhibits which have been offered here? A. Yes, sir.

Q. There have been no interlineations or erasures of any kind? A. No, sir. [487—436]

By Mr. ALLEN.—We now offer in evidence, under that generous statement of Mr. House, any exhibits which have been offered here on behalf of the Government as showing him the legal custodian of any of these exhibits and which may have been offered for identification, may have been identified, but not finally offered in evidence, if there are any such.

Mr. KERR.—We object to any such general offer as that because there are a great many folders have been produced here, the contents of which have not been specified or referred to in particular. Under that general sweeping offer we have no way of telling what is going to this jury or the purpose of its going, or opportunity to object to it or opportunity to meet it when we come to our own case. If there is any part of any of these records that have not been

(Testimony of Hiram S. House.)

admitted by the Court, we desire to, and insist that the witness' attention shall be called to them, to that end that we shall be able to meet them in the proper way.

Q. I call your attention to 26 and 27—26 is taken from the files of the Great Western Smelting & Refining Company.

The COURT.—I think that the defendant's attention should be called to any particular item that you desire to call the jury's attention to.

Q. I call your attention to the Government's identification No. 21, page 4, which is stamped on the back, Plaintiff's Exhibit No. 21, 22 and 24, offered for identification. Is that taken from the file of the Great Western Smelting & Refining Company?

A. Yes, sir.

Q. It is now in the same condition in which you received it? A. Yes, sir. [488—437]

Mr. SCHLESINGER.—We object to the introduction in evidence of exhibit 21, marked for identification, embracing both checks together, embracing checks No. 4972 and 4973, upon the ground that they are all I. I., and have nothing to do with any of the issues involved in this case.

The COURT.—Objection overruled and exception allowed.

Mr. SCHLESINGER.—We call upon the Government now to disclose the purpose of the offer.

Mr. ALLEN.—These matters will be brought out further in Mr. House's testimony.

Mr. VANDERVEER.—I submit they should be

(Testimony of Hiram S. House.)

withheld until the materiality is shown. On the face of the check it appears it is immaterial. Unless counsel can state or show it is material, I submit the Court should not receive it. It goes in here absolutely blind, absolutely without apparent significance or meaning in the case. The same principle of law which requires the defendant to be informed in regard to matters which he should answer, requires he should be informed regarding this matter.

Mr. KERR.—As attorney for Mr. Goldberg, these two checks are checks that were signed by Mr. Goldberg as Manager of the Great Western Smelting and Refining Company. To the end that Mr. Goldberg and his attorneys may be advised at this time the purpose for which the Government is offering these checks, and as to the claim of the Government that they have any materiality, I insist that the Court shall now require the Government to state the materiality, if there is any materiality or relevancy to these checks, so we may know when we put Mr. Goldberg upon the stand.

Mr. ALLEN.—I am going at this time to offer to take these matters up and offer these checks in their order, the different exhibits [489—438] as we come to them in that way, just simply to oblige counsel. We will do it in their way if your Honor thinks best.

Mr. KERR.—I insist, if that is the position of the Government, your Honor, they shall disclose to us before they rest their case, what the Government is claiming to be the relevancy or materiality of these



(Testimony of Hiram S. House.)

checks, to the end that Mr. Goldberg, when we come to our defense, may intelligently meet the claim of the Government, and have an opportunity in the meantime to prepare these contractions, covering a great many transactions of five or six years, together, to make his defense.

The COURT.—Is there anything aside from what is disclosed on the face of the checks, that the Government desires to insist upon?

Mr. ALLEN.—I am going to follow their suggestion. I am going to take Mr. House's full recital of these matters, and as we reach each particular check, we will offer them in evidence. That is done for the accommodation of counsel.

Mr. KERR.—Not the accommodation. We demand it as a matter of right.

Mr. ALLEN.—In each case these different exhibits have been identified by some man who knew the signature and had the proper identification.

Q. (Mr. KERR.) Then I will state to the Court now, I will reserve my right to ask to withdraw them, if counsel does not prove the purpose of the Government in offering these checks, and the materiality. (Exhibit 21 withdrawn at this time.)

Q. Directing your attention to sheet No. 525 in the Great Western Smelting & Refining Company's book, this Government Exhibit No. 28, and the bill for that same transaction, state to the jury just what book that is?

A. The same being receiving book of the Great Western Smelting and Refining Company.

(Testimony of Hiram S. House.)

Q. Directing your attention to sales sheet No. 359? [490—439] A. 525.

Q. 525, that is right.

A. This shows on September the 30th, 1907—

Mr. VANDERVEER.—I object to the witness reading from a paper not yet in evidence.

The COURT.—You could offer these various exhibits together, and then if there is objections,—

Mr. VANDERVEER.—This bears date of September 30th, 1907.

Mr. ALLEN.—Your Honor will understand these instruments have all been identified and I wanted to make that original offer cover all.

The COURT.—Just offer them, then, without having the witness read to the jury what they contain.

Mr. ALLEN.—We now offer in evidence exhibit 28.

Mr. KERR.—We object to it on the ground it is immaterial, has nothing to do with this transaction.

Mr. ALLEN.—I offer in evidence this particular page, sheet No. 525, in the Great Western Smelting and Refining Company's book, and which is now open before the clerk.

The COURT.—Exhibit No. 28.

Mr. ALLEN.—Yes, sir, 525.

The COURT.—What is the objection to it?

Mr. VANDERVEER.—The objection that on the face of it it appears to be immaterial to any issue in this case. It relates to a transaction dated September, 1907, has no reference to this particular transaction, and before it is admitted counsel should show

(Testimony of Hiram S. House.)

to the Court, if not to the defendants, what its materiality is.

Mr. ALLEN.—That is what we propose to do.

Mr. SCHLESINGER.—We join in that objection.

Mr. SCHLESINGER.—Now, if your Honor please, I understand the unique proposition now advanced is they are going to show by [491—440] certain documents the value of certain goods at certain times. I submit that is not competent evidence because the conditions existing at that time are now shown by these exhibits. (Further argument by counsel.)

The COURT.—Objection is overruled and exception allowed. I think that when you show that they paid eight cents, the Government have a right to show what that was sold for, and have the whole transaction before the jury.

Mr. SCHLESINGER.—Let me ask you a question, please, Mr. Allen, while we are on the subject. Could you say now, taking this lot at 1907, could you say without a knowledge of the conditions surrounding the Great Western Smelting & Refining Company, how much they should have gotten for that same lot of zinc in 1907?

Mr. ALLEN.—We are going to show you how much you did get as a matter of fact.

Q. Referring to that particular matter which shows sheet No. 525 in the Great Western Smelting and Refining Company's books, what does that show?

Mr. KERR.—I object to it. It shows for itself.



(Testimony of Hiram S. House.)

Q. State, as an expert accountant, what does that sheet indicate?

Mr. KERR.—I object to that. The books shows for itself.

The COURT.—If there is anything upon the face of the records that demands an explanation, he can explain it.

Mr. KERR.—Nobody has claimed that. They are asking what the books show.

The COURT.—Proceed. Objection overruled and exception allowed.

A. This sheet No. 525 shows that on September 30th, 1907—

Mr. KERR.—You are reading from it now. I object to it upon the ground it is not the best evidence.

Mr. ALLEN.—It has been offered in evidence, this sheet has.

Mr. KERR.—Then if it has there is no use for the witness to read it. [492—441]

The COURT.—He can read it to the jury.

Mr. KERR.—It is not the business of the witness to read it.

A. (Continuing.) Matheson and Heggler, car-load of zinc plates, \$2,984.41.

Q. Now, I call your attention to Corder's check No. 589, dated August the 20th, 1907. Have you their check No. 589?

By the COURT.—What check are you offering?

Mr. ALLEN.—That has been identified.

A. Those haven't been identified.

(Testimony of Hiram S. House.)

Q. Are you familiar with the signature of W. A. Corder?

Mr. VANDERVEER.—We will admit the signature.

(Whereupon said check was marked for identification exhibit 59.)

Q. Can you, from the ledger of the W. A. Corder Company, that is the account to which these matters refer—

A. No, not from their ledger; they had no ledger account.

Mr. KERR.—What two matters do you refer to?

Mr. VANDERVEER.—A car of zinc in September, 1911.

Mr. ALLEN.—We offer this in evidence.

Mr. VANDERVEER.—I object as immaterial.

The COURT.—Let counsel examine the exhibit.

Mr. VANDERVEER.—It is a check bearing date August the 20th, 1907; I say it is irrelevant and immaterial. If it tends to prove anything, I suppose it tends to prove he paid for one-half car of zinc, which he owned one-half interest in in 1907. It is irrelevant and immaterial to this case. What is the difference whether Mr. Corder owned a dozen cars of zinc, to any issue in this case, whether Mr. Corder owned a car of zinc in 1907?

The COURT.—Proceed.

Q. I call your attention, then, to check No. 635 of W. A. Corder & Company, have you that check?

[493—442]

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Are you familiar with the signature of W. A. Corder and Company?

Mr. VANDERVEER.—We admit it.

Q. That is the signature, is it?

Mr. VANDERVEER.—Yes. Do you want me to admit Mr. Corder owns one-half interest in the zinc purchased by this company from the time—

Mr. ALLEN.—We want you to admit this is one-half of the fight.

Mr. VANDERVEER.—I will admit Mr. Corder was interested and one-half owner in nearly all the zinc purchased by the Great Western Smelting and Refining Company, from the time that he bought out the Pacific Engineering Company in the spring of 1906, down to the time you threw him in bankruptcy.

Mr. ALLEN.—Down through 1907?

Mr. VANDERVEER.—Yes, down through 1908.

Mr. ALLEN.—Until August, 1908?

Mr. VANDERVEER.—Yes, all the time reserving my objection that it is immaterial and irrelevant.

The COURT.—That disposes of 59, then?

Mr. ALLEN.—For the time it does.

Q. I call your attention to sheet 634 of the books of the Great Western Smelting and Refining Company.

The COURT.—Has that been identified as an exhibit?

Mr. ALLEN.—636, I should have said. No, it has not.

(Withdraws question.)



(Testimony of Hiram S. House.)

Q. I call your attention to Defendant's Exhibit "M," offered here on behalf of the defendant. What does that show with reference to the cost of the zinc of that particular car?

Mr. SCHLESINGER.—We object to that upon the ground it is I. I. I. It does not fix the question as to the price of zinc in Seattle, [494—443] at a particular locality, and he is absolutely disqualified from testifying. He has not been brought in here as a man knowing values, but simply as an expert accountant, and for no other purpose, and this testimony is in no wise binding upon Mr. Goldberg.

The COURT.—Is there anything on the face of this exhibit that requires an expert accountant?

Mr. ALLEN.—It has been read to the jury, admitted by the defendant. May I call attention to this particular item?

The COURT.—Yes, call his attention to any item.

Q. I call your attention to that part of Defendant's Exhibit "M," which fixed the price that this Matheson and Heggler sold them nearly a car of zinc in the month of September, 1907. Now, can you, by reference to sheet 539 of the Great Western Smelting and Refining Company's books, 360 and 543, can you state from that, state to the jury the price obtained by this concern for zinc at that time?

Mr. SCHLESINGER.—We object on the same ground. As I understand the province of an expert accountant, it is to make clear matters of complicated accounts, and point out, and that is what he is put here for. He is not put here to determine

(Testimony of Hiram S. House.)

what was or what was not a reasonable profit or selling price for this zinc.

The COURT.—I have asked the question to be read. If you cannot agree upon that exhibit, you can take that exhibit and refer to the books and show what the entry is and then he may answer.

Q. Can you, by reference to those books, ascertain the price obtained for zinc at that time, referring more particularly to 359, 360 and 543?

Mr. SCHLESINGER.—This is subject to our objection as to its competency and materiality.

The COURT.—Objection overruled and exception allowed. [495—444]

Q. Page 359, the Government's Exhibit No. 26 shows on September the 4th, 1907, a sale of zinc plates to John Simm Metal Works, 4587 pounds at \$9.50. What was the date of that?

A. September 4th, 1907, 4587 pounds at \$9.50.

Q. What do those other pages show?

A. \$435.77; cartage, \$1.00; total \$436.77.

Q. That was page 359? A. Yes.

Q. Referring to 360, what does that show?

A. Page 360 of Government's Exhibit 26—

Mr. SCHLESINGER.—Same objection.

A. (Continuing.) —shows a sale of September the 4th, 1907, to the Pacific Engineering Company, of 1036 Pounds at \$9.55, at \$958.44. Cartage, \$3.00; total, \$961.44.

Q. I call your attention to sheet 543; what does that show?

A. Page 543 of Government's Exhibit No. 26

(Testimony of Hiram S. House.)

shows the sale on November 20th, 1907, to the John Simm Metal Works of 8 boxes zinc plates, one-half by six by twelve, 3,992 pounds, at nine and one-quarter cents, \$369.26.

Mr. ALLEN.—We now offer in evidence these three sheets, 359, 360 and 543 and also sheet 525 with the two checks.

The COURT.—What are those?

Mr. ALLEN.—Government Exhibit 26.

Mr. KERR.—These parties were all jobbers, Simm and Company were jobbers in this city.

The COURT.—What exhibit is that? Exhibit 26?

Mr. ALLEN.—Yes, a part of exhibit 26. We offer these in evidence.

The COURT.—Objection overruled and exception allowed and exhibit 26 be admitted.

(Whereupon said sheets were admitted in evidence and marked as Government's Exhibit 26.) [496—445]

Mr. ALLEN.—Referring to sheet No. 11 of the Great Western Smelting and Refining Company—

The COURT.—What exhibit is that?

Mr. ALLEN.—I don't think it has been offered in evidence. Sheet 11 of the Great Western Smelting and Refining Company's books

(Whereupon sheet 11 was admitted in evidence and marked as Government's Exhibit 60.)

Q. I call your attention to sheet No. 11, do you find that? A. Yes, sir.

Q. You identified that as a part of the records of that concern? A. Yes, sir.



(Testimony of Hiram S. House.)

Q. What is the character of the book?

A. It is the receiving-book.

Mr. ALLEN.—We offer that in evidence. This is another one of these Corder's—

(Whereupon said sheet was admitted in evidence and marked Government's Exhibit 28.)

Q. This is Corder, showing their purchase of another car of zinc.

The COURT.—It has been identified.

Mr. ALLEN.—The whole book has as exhibit 28.

Mr. VANDERVEER.—I think this is a different matter, embraced in an offer or admission I made and which counsel accepted. If so, it is not a matter subject to proof. I want the records to show, as I stated at the time, I want to be sure it shows this is all over my objections and it is not material or relevant to any issue in the case. Subject to that reservation, I admit, I have admitted the fact, and it seems to me that the Government, having accepted my admission, the Government cannot now go into the issue in this detail.

Mr. SCHLESINGER.—I offer a suggestion. I don't want to be constantly objecting. May it be understood all this line of testimony is [497—446] deemed objected to upon the grounds heretofore specified by us, without the necessity of having to repeat the objection, and the exception follow.

The COURT.—Yes, sir.

Q. I call your attention to Corder's book No. 424, and the Great Western Smelting and Refining Company No. 574, of date December the 3d, 1907.

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. What do you find there at sheet 424?

A. This book hasn't been put in evidence?

Q. Where did you find that book?

A. I got it from Mr. Garrett, the receiver for the W. A. Corder Company.

Q. It was part of the files of the W. A. Corder Company, was it?      A. Yes, sir.

Mr. ALLEN.—We offer it for identification, and offer it in evidence.

Mr. VANDERVEER.—Do you offer the whole book?

Mr. ALLEN.—No, sheet 424.

Mr. VANDERVEER.—I object as immaterial and irrelevant; I do it for the purpose of presenting a question, a question in which both of us ought to be interested in getting the Court's ruling.

Mr. VANDERVEER.—Your Honor overrules my objection?

The COURT.—Yes, objection overruled and exception allowed.

Q. That sheet I will then read to the jury, ask you to read it, sheet 424, exhibit 60.

A. Sheet 424, Government's Exhibit 60, sales sheet of W. A. Corder Company, sold to United States Navy Pay Office, order 58 N. S. F., 9 rolls zinc plates, one-half by twenty-four by thirty-six; 9 rolls zinc plates, one-half by twenty-four by forty-eight; 9 rolls zinc plates, five-eighths by twenty-four by thirty-six; 3,713 pounds, 10 and one-fourth's cents, \$380.58. Bought by [498—447] W. A. Corder

(Testimony of Hiram S. House.)

Company direct. G. W. S. & Ref. Company, 4328, one-half profit.

Q. Do you often find on these boxes the initials "G. W. Company," and so forth?

A. They are generally spelled out.

Q. When you so find it it refers to the Great Western, does it, as you find it in your records?

A. Yes, sir.

Q. I will call your attention to that part of the Great Western Smelting and Refining Company's books, sheet 5,742.

A. Well, sheet No. 574, Government Exhibit No. 26—

Q. What is the date of that?

A. December the 5th, 1907.

Q. The other was December the 3d, I believe you stated?

A. W. A. Corder Company, Seattle, one-half profit of sales of plate zinc 24 by 36 and so forth, to navy yard, 2,344—

Q. In other words, the Great Western books do show they got one-half profit on the zinc shipped the navy yard by W. A. Corder Company?

Mr. KERR.—As to what it shows is a matter—

A. Yes, sir.

Q. Calling your attention to sheet 582—and sheet—

A. Sheet 582 of Government's Exhibit 26, dated December the 10th, 1907, charged to W. A. Corder Company, Seattle, one-half sale of zinc plates, month of November, \$119.65.



(Testimony of Hiram S. House.)

Q. I call your attention to the Corder book now, 525 now.

A. "Sales sheet No. 425 of the Corder Company is Government's Exhibit 60, dated December 30th, 1907, sold to United States Navy Pay Office, order No. 66, N. S. F., 9 cases one-half by 34 by 36 rolls zinc plate, 1058 pounds; one-half by 24 by 36 roll zinc plates at 11 cents, \$116.36. [499—448]

Q. I call your attention to 492.

A. Three pieces, one-half by 24 by 36, roll zinc plate, 339 pounds at 11 cents, \$37.29. Corder stock, enter separate. Then circled, is "304, 32, 33, 597, total 1048." Carried out as 1058, a difference of ten pounds.

Q. Sheet 492?

A. This is sales sheet 492, W. A. Corder Company, Government's Exhibit 60, sold to United States Navy Pay Office, December 30th, 1907, order 76, N. S. F., 11 one-half by 24 by 36 rolls zinc plate, 2848 pounds; one-half by 24 by 36 rolls zinc plate at 12 cents, \$341.88.

Q. Sheet 505?

A. Sheet 505, Government's Exhibit 60, sales sheet W. A. Corder Company, sold to the United States Navy Pay Office, Walker Building, December 27th, 1907, order No. 81, bureau N. S. F., 4421 pounds, one-half by 24 by 36, rolls zinc plate at 11 cents, \$486.31.

Q. 509.

A. Sales Sheet 509, Government's Exhibit 60, being sales sheet W. A. Corder Company, to the United States Navy Pay Office, December 27th, 1908, under

(Testimony of Hiram S. House.)

order No. 79, N. S. F., 5084 pounds, one-half by 24 by 36 rolls zinc plate at 11 cents, \$559.24.

Q. Page 626 of the Government Exhibit 26, sales sheet of the Great Western Smelting and Refining Company, dated January 9th, 1908, W. A. Corder Company, Seattle, one-half sale \$1,465.68, zinc plates to Government, of which \$699.04 was charged December 31st, 1907. Then extended, \$732.84, and under that \$699.04 and then \$33.80.

Mr. KERR.—That is the profit, is it?

A. That is the additional profit. This much was charged on December [500—449] 31st, it says. This is additional of the sale price, doesn't say anything about the profit.

Q. I understood Mr. Kerr to say it was the profit?

A. I misunderstood him.

Q. In the Corder book, just give briefly the sales in December; take sheet 568 and just give the name of the person, date, amount and price.

A. 568, date December the 3d, 1907, sold to Lewis, Anderson, Ford and Company, I remember Mr. Potts, 60, 1 by 6 by 12 rolls zinc plate, 1125 pounds at ten and one-quarter cents, \$115.31.

Q. Sheet 572?

Mr. KERR.—They are also jobbers?

Mr. ALLEN.—I don't know; I think they are.

On direct examination of said witness being resumed by Mr. RIDDELL, said witness testified as follows:

Q. You were showing the counter sales of zinc on

(Testimony of Hiram S. House.)

December the 11th. Give the date, number of pounds, and price per pound.

A. Date, December the 3d, 1907, to Lewis, Anderson, Ford & Company, 1 by 7 by 12—

Q. Just give the price per pound.

A. 1125 pounds at ten and one-quarter cents.

Q. Sheet 572?

A. Date is December 5th, 1907, sold to the Great Western Steamship Company, Saratoga, Seattle, Washington, 450 pounds at 11 cents.

Q. 574?

A. December 5th, 1907, Great Western Smelting and Refining Company, 567 pounds at 702, and ten and one-half dollars freight.

Q. Ten and a half dollars freight?      A. Yes, sir.

[501—450]

Q. That is how many pounds?      A. 567.

Q. You don't pretend, Mr. Kerr, that the steamship company was a jobber?

Mr. KERR.—I claim this last one is cost price.

Q. 582?

A. Dated December 26th, 1907, to Puget Sound Tug Company, 575 pounds at 11 cents.

Mr. RIDDELL.—I think we could stipulate when they are jobbers and when they are not.

Mr. VANDERVEER.—Also stipulate sales to the Government had to be shipped in paper boxes, separate, shipped across the Sound.

Mr. KERR.—I will admit these two, 11 cents, were not jobbers.

Mr. SCHLESINGER.—I don't know whether my



(Testimony of Hiram S. House.)

objection is quite clear, whether my objection covers this line of testimony as to the Corder transaction. May it be understood?

The COURT.—Yes, it is understood.

Q. 58?

A. December 14th, 1907, sold to Lewis, Anderson, Ford & Company, 190 at 10 and one quarter cents.

Q. You say they are jobbers?

A. Yes, they are jobbers.

Q. 593? A. I have got 592 here.

Q. Did you get 592?

A. No, I haven't read it. December 12th, 1907, sold to the Great Western Smelting and Refining Company, 1225½ pounds at 10¼ cents, cost to cut the same 876.

Q. 593?

A. Dated December 13th, 1907, Great Western Smelting and Refining Company, 225 pounds, no price, 1655 and freight 281. [502—451]

Q. 398?

A. Dated December 21st, 1907, sold to Northwestern Steamship Company, Laurretta Clara, 206 pounds at 11 cents.

Q. 206 pounds at 11 cents? A. Yes, sir.

Q. They are not jobbers, either?

Mr. KERR.—No, they are not jobbers.

Q. That is to a private individual. 608?

A. Dated December 28th, 1907, sold to Northwestern Steamship Company, Steamship "Dora," 478 pounds at 11 cents.

Q. That is again to a private individual?

(Testimony of Hiram S. House.)

Mr. KERR.—Those are all in December.

Q. That is on that car that was bought at 8 cents?

A. I don't know on which car this was sold. Some of them were small zincs, some of them large.

Mr. VANDERVEER.—If it is not material we move to have it stricken; it is offered on the theory it will explain the price at which a certain car was sold. The witness says it does not do so.

Mr. RIDDELL.—It was subsequent to the receipt of that car.

Q. Turn to Great Western Company, sheet 627?

A. Sheet 627. Great Western Smelting and Refining Company, dated January the 9th, 1908, W. A. Corder Company, Seattle, one-half sale zinc plates, December sale, 2904 pounds, \$168.04.

Q. Turn to Corder Company sales, sheet 629?

A. Dated January 13th, 1908, sold to Alaska Steamship Company, steamer "Olympia," 468 pounds at 11 cents.

Mr. KERR.—I concede they were not jobbers.

Q. Sheet 632?

A. Dated January 14th, 1908, sold to Pacific Engineering Company, 411 pounds at 10 cents. [503—452]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants. Edwin F. Meyer and Emar Goldberg. Vol. 3, Pages 295 to 452. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [504]

Q. 11 cents the day before and 10 cents this day.

(Testimony of Hiram S. House.)

Do I understand these people are jobbers or not?

Mr. KERR.—Yes, sir, probably are jobbers.

Q. The sale at 11 cents was to the consumer, and the sale at 10 cents to the jobber?

Mr. KERR.—Yes.

Q. Next sheet 637?

A. Dated January 20th, 1908, sold to Pacific Engineering Company, 38 pounds at 10 cents.

Q. 651?

A. Dated February 7th, 1908, sold to Lewis, Anderson, Ford Company, 234 pounds at  $10\frac{1}{4}$  cents.

Q. 662?

A. Dated February 7th, 1908, sold to city of Seattle, Fire Department, 209 pounds at 10 cents.

Q. That was, I presume, not a jobber. 667?

A. Dated February the 4th, 1908, sold to Alaska Steamship Company, Saratoga, 500 pounds at  $9\frac{1}{2}$  cents.

Q. 680?

A. Dated February 27th, 1908, P. C. S. F. Company, Pacific Coast Steamship "Coral," 2486 pounds at 9 cents.

Q. 2486 pounds at 9 cents?

A. All of these I am reading refer to zinc plates.

Q. Now 701.

A. Dated March 10th, 1908, United States Navy Pay Office requisition No. 336, 4198 pounds at  $12\frac{1}{2}$  cents.

Q. This sale of 4198 pounds at  $12\frac{1}{2}$  cents was how many days after the sale of the 2,000 pounds at 9 cents? A. 11 days.



(Testimony of Hiram S. House.)

Q. We have your requisitions 336. [505—453]

By a JUROR.—I didn't get all the dates. Were all these within a period of two or three months?

A. The sale to the Pacific Engineering Company was made February 27th, 1908, at 9 cents. The sale to the United States Navy Pay Office was made on March 10th at 12½ cents.

Mr. RIDDELL.—These sales started on December the 3d, 1907, and have progressed so far to March the 10th, 1908, December the 3d to March the 10th.

Q. Now, that last sale you mentioned was made to the navy yard on requisition No. 336?

A. Yes, sir.

Q. What is the date of that requisition? Is there any objection to our just using that requisition, it is just like any of the rest of those, it has never been admitted, and it isn't necessary to—where did you get that? A. From the Navy Pay Office.

Q. At Seattle? A. Yes, sir.

Q. As part of the Government's records?

A. Yes, sir.

Q. And it has been in your possession, official custody ever since you got it? A. Yes, sir.

Mr. MORRIS.—Complete records here?

A. Yes, sir.

Mr. MORRIS.—Never has been taken out?

A. No, sir.

Mr. MORRIS.—Have you, in your possession, the General Storekeeper's files on the same requisition?

A. Wasn't it in that list? Here is the General

(Testimony of Hiram S. House.)

Storekeeper's files in this folder. (Handing counsel papers.) [506—454]

Mr. MORRIS.—Defendant Meyer has no objection to the introduction of requisition 336.

Mr. ALLEN.—We offer it in evidence.

Mr. MORRIS.—Both the Navy Pay Office folders and the storekeeper's folder? A. Yes.

(Whereupon requisition 336 was introduced in evidence and marked Government's Exhibit 61.)

Mr. ALLEN.—Now, the other part of 336 we offer also for admission, Plaintiff's Exhibit 62.

Mr. RIDDELL.—That is Navy Pay folder 61.

The COURT.—Let it be admitted.

(Whereupon Storekeeper's folder, Government's Exhibit 62, is admitted in evidence.)

Q. Now, what is the date of that requisition 336? Plaintiff's Exhibit 61? A. February 25th, 1908.

Q. How many pounds?

A. 4,000 pounds, rolled zinc, 1 inch by 6 by 12.

Q. Corder Company bid?

A. Estimated cost is 12 cents, yes, sir; W. A. Corder bid.

Q. How much? A. 12½ cents a pound.

Q. Did Goldberg bid? A. Yes, sir.

Q. How much?

A. 12 3/5 cents a pound. Great Western Smelting Company.

Q. He signed the bid? A. Yes, sir.

Q. Did anybody else bid? A. Yes, sir. [507—455]

Q. Who?

(Testimony of Hiram S. House.)

A. The American Iron and Metal Company.

Q. How much? A.  $12\frac{3}{4}$  cents.

Q. That is Rubenstein's Company, is it, that is signed by Rubenstein?

A. There was no official signature to it.

Q. Now turn to page 716?

A. Page 716, W. A. Corder Company, dated March 21st, 1909, sold United States Navy Pay Office, on the requisition No. 358—says, "Render invoice to general storekeeper as follows, 3,887 pounds  $\frac{1}{2}$  by 36 rolled zinc plates at  $12\frac{1}{2}$  cents, \$485.87. Charge their account, then write above rejected goods, 3,887 pounds,  $\frac{1}{2}$  by 24 by 36 rolled zinc plates,  $11\frac{1}{2}$  cents a pound, \$58.31.

Q. Now, do any of those requisitions which are on that say rejected material? A. Yes, sir.

Q. What are those numbers?

A. Requisition No. 81.

Q. For how much?

A. For about 2,800 pounds, estimated cost 15 cents a pound, \$420.

Q. How much was delivered—4,421 pounds?

A. 4,421 pounds.

Q. How much was rejected? A. 1,617 pounds.

Q. What is the next, the other delivery?

A. On requisition No. 79—

Mr. SCHLESINGER.—All over our objection as I. I. I.

The COURT.—The same matter, I guess, the Court has passed on several times. [508—456]

Mr. VANDERVEER.—Not precisely, going into



(Testimony of Hiram S. House.)

folders relating to different transactions.

The COURT.—What are you on now?

Mr. RIDDELL.—Taking up the same sales we were on, continuing. There is a debit at one-half cent a pound, relating to other zinc which has been rejected formerly.

Q. What was the date of the other requisition?

A. October the 7th, 1907.

Q. What does the amount call for?

A. 2,800 pounds.

Q. What is the price? A. 15 cents.

Q. How much was delivered? A. 5,084 pounds.

Q. How much accepted and how much rejected?

A. 2,824 accepted, 2,280 pounds rejected.

Q. Both these exhibits or bids were made by whom? A. W. A. Corder Company.

Q. What does the total amounts amount to of these two rejections of the W. A. Corder Company bear to the amount of the new requisition which you have just been discussing?

Mr. KERR.—I object to that as being entirely immaterial and irrelevant and has nothing to do with this transaction, taking up the rejections of the Corder Company.

The COURT.—Where is the materiality?

Mr. RIDDELL.—The materiality is this, in March, 1908, Mr. Meyer put through a requisition to take up just exactly the kind of zinc that was rejected for Corder and lying over there on the dock. All this time the price of zinc had been coming down, the sales show it came down from ten cents a pound

(Testimony of Hiram S. House.)

until they sold [509—457] 500 pounds to the steamship company at ten cents. Now he put this through at 12½ cents.

Mr. KERR.—The records show in the month of December, 1907, maybe later than that, we have sold and it was passed through jobbers at 11 cents, ten and a quarter cents, but it has nothing to do with this case.

The COURT.—Let it go in.

Q. Now, I understand that these two requisitions went through at 11 cents to W. A. Corder Company?

A. Yes, sir, they were awarded to W. A. Corder Company at 11 cents.

Q. And the identical amount of the amount rejected on these two propositions was afterwards put through on another requisition at 12½ cents?

A. A difference of ten pounds.

Mr. KERR.—I move to strike that out on the grounds it is absolutely irrelevant and immaterial to any issue in this case.

Q. Now, turn to the Great Western sales sheet No. 731, dated March 16th, 1908?

Mr. MORRIS.—Are these the papers you just handed to the clerk to have marked?

A. Yes, I think they are.

By the CLERK.—There are six here, your Honor; I don't know.

By the WITNESS.—I gave testimony from six folders. Mr. Morris asked them put in evidence.

Mr. MORRIS.—They were offered in evidence by the Government and I am insisting they go in.

(Testimony of Hiram S. House.)

By the CLERK.—They have never been identified.

The COURT.—The clerk nor anybody else can keep any record of these matters unless his attention is called to it. One is marked 63, that is 63. [510—458]

By the WITNESS.—Open purchase requisition No. 358, Navy Supply Fund, navy pay office; 64 is Navy Yard folder; exhibit 65 is the navy pay office folder, No. 79; No. 66 is Navy Yard folder No. 79; No. 67 navy pay office No. 81; No. 68 is Navy Yard folder No. 81.

The COURT.—Is that all? Are these all admitted in evidence?

Mr. MORRIS.—No objection.

(Whereupon Government's Exhibit 63, 64, 65, 66, 67, 68 are admitted in evidence.)

Mr. ALLEN.—We offer those he has read from. Those have been identified.

Q. Great Western sheet No. 731, dated March 16th, 1908.

A. Sheet 731, dated March 16th, 1908, charged to W. A. Corder Company, one-half sale of zinc during January and February to March 13th, \$439.47.

Q. Corder sheet 736? A. Dated April 26th.

Q. Putting in price to which he sold the consumers and to the navy yard. I can make a stipulation of that and make an offer of it.

Mr. KERR.—If you will tabulate what is in that book?

Mr. RIDDELL.—We offer in evidence those we have read and the following, and then Mr. House



(Testimony of Hiram S. House.)

will make a tabulation of it and we can introduce it in evidence as an exhibit.

Mr. ALLEN.—We are offering now those which have been read.

The COURT.—They all have been read to the jury and are in evidence now.

Mr. RIDDELL.—In addition to those we will offer Great Western sales sheet—offer Corder sales sheet 726 and Great Western sales sheet 120, and the following miscellaneous sales from the Corder book; 795, 821, 844, 868, and 872, dated respectively April 22d, April 28th, May 7th, May 13th, and May 14th, 1908, and at the following prices, 9½ cents, 9 cents, 9½ cents, 9½ cents, and 9½ cents. 875, dated May 16th, 1908, sold [511—459] to the navy yard at .1245 cents, requisition No. 444. Great Western sales sheet 120, dated May 29th, 1908, one-half zinc to navy, charging back one-half zinc to navy on this requisition, \$12.45. Great Western sales sheet 565, dated December 3d, 1907, sold to yard at 14 cents, and Corder sheet 576, dated December 5th, 1907, one-half United States Navy. Great Western sales sheet 566, dated December the 3d, 1907, sale to yard, 16 cents and Corder sheet 602, 12-27—one-half profit United States Navy. Great Western sheet 593, dated December 13th, 1907, sale to yard at 16 cents. Corder's sheet 603, 12-27—one-half profit to United States Navy. Great Western sheet 658, January 23d, 1908, Pacific Engineering Company at 8 cents. Corder 689, February 19th, 1908, one-half of that sale. Great Western sheet 667, February 21, 1908,

(Testimony of Hiram S. House.)

Finn Metal work and at  $8\frac{3}{4}$  cents and Corder sheet 689, dated February 29th, for one-half of that. Great Western sales sheet 722, March 12th, 1908, sale to United States Navy 11  $19/100$  cents, and Corder sheet 710, at March 13th, 1908, for one-half of that. Great Western sales sheet 732, March the 12th, 1908, sale to United States Navy, 11.90 and Corder sheet 723 for one-half of that. Great Western sales sheet 754 dated March 24th, 1908, to the Postal Telegraph Company at  $12\frac{1}{2}$  cents, and Corder sales sheet 723 for March 26th, 1908, for one-half of that. Great Western sales sheet 14-A, dated April 8th, 1908, reciting a balance on 732. Great Western sales sheet 753, April 29th, 1908, Pacific Engineering Company at  $8\frac{1}{2}$  cents. Corder's sales sheet 805, April 24th, 1908, for one-half of that Pacific Engineering sale and Great Western sale sheet of April 29th, 1908, this deal in controversy here, at 4.45 at Corder's sheet 828 of April 30th, 1908, charging one-half of that. [512—460]

(By Mr. ALLEN.)

Q. Mr. House, I call your attention to folder of the navy yard, folder number 153, that is requisition No. 153 of Naval Supply Fund, that is a folder taken by you from the—

Mr. MORRIS.—Is that the folder that is in evidence?

Mr. ALLEN.—Not as yet. Let me change that to 169, requisition 169.

Mr. KERR.—What date is that?

Q. Date November 19th, 1907. I call your atten-

(Testimony of Hiram S. House.)

tion to requisition No. 169 of Navy Supply Fund; did you take this folder from the records of the Navy Department?      A. Yes, sir.

Q. I call your attention to those persons bidding on this particular award.

Mr. KERR.—What date is that?

Mr. ALLEN.—November 19th, 1907.

M. KERR.—I object to that as I. I. I.; it has nothing to do with this controversy.

Mr. ALLEN.—I asked to have this stamped for identification.

The COURT.—It will be admitted. Objection overruled and exception allowed.

(Whereupon said folder was introduced in evidence and marked Government's Exhibit 69.)

Mr. KERR.—I object to the introduction of this transaction as not involving in this indictment in any way, too remote, and absolutely incompetent and irrelevant to any issue in this case.

Mr. ALLEN.—That is November the 7th, 1907.

The COURT.—Let him answer. Objection overruled and exceptions allowed.

Q. Who were these bidders on the award in this particular transaction?

Mr. KERR.— [513—461] I object to that on the ground it is immaterial who the bidders were.

The COURT.—Objection overruled and exception allowed. Go ahead and explain to the jurors who were the bidders.

A. The Great Western Smelting and Refining Company bid 14 cents a pound. They received the



(Testimony of Hiram S. House.)

award for 1,500 pounds at 14 cents. Seattle Hardware Company bid on 500 pounds of the 4,000—the requisition calls for 400 pounds. The Seattle Hardware Company bid on 500 pounds at  $10\frac{1}{2}$ . That amount was awarded to them. The Pacific Engineering Company bid on the entire 4,000 pounds at  $10\frac{1}{2}$  a pound. They received the award of 2,000 pounds at  $10\frac{1}{2}$  cents. The W. A. Corder Company bid on the entire amount at  $14\frac{1}{4}$  cents. D. Boles said, “As we don’t handle zinc, are not in position to bid.” A. Hamback Company said, “Unable to bid.” Schwabacher Hardware Company: “Unable to supply.” Western Hardware and Metal Company, “Unable to furnish.” The unsigned bid of the John Finn Metal Works at  $9\frac{3}{4}$  cents to be delivered in 12 days.

Mr. KERR.—What do you mean by the “unsigned” bid?

A. Well, it states at the top it is “John Finn Metal Works,” but it has no signature at the bottom and is filled in for  $9\frac{3}{4}$  cents a pound. Bid of the Pacific Metal Works at  $10\frac{1}{2}$  cents per hundred. Puget Sound Machinery Depot, “Unable to cope.”

Q. Was any award made in that transaction to either the W. A. Corder Company or to the Great Western Smelting and Refining Company?

A. Yes, sir.

Q. What was the amount of that award?

A. 1500 pounds at 14 cents a pound.

Q. Now, can you ascertain, and do you know any place in the books, that have been offered or identified

(Testimony of Hiram S. House.)

here of the books of either [514—462] one of these concerns, can you find such pages or parts therein that refer to that transaction and the participation of either of those concerns in that transaction? A. Yes, sir, I can.

Q. What do you find, what books do you find in reference to it?

A. This is page 565 of Government's Exhibit No. 26, being sales sheet of the Great Western Smelting and Refining Company.

Q. To whom was the award made for 1,500 pounds?

A. To the Great Western Smelting and Refining Company.

Q. What do the sales sheets show?

A. Dated December 3d, 1907, to the United States Navy Yard, Bremerton, Washington, under requisition 169, 3 boxes of zinc plates, one-half by 6 by 12, 1,478 pounds at 14 cents, \$206.92.

Q. Where else in the books of either of these concerns do you find any reference to this particular transaction?

A. Page 576 of Government's Exhibit 60, the sales sheet of the W. A. Corder Company, sold to the Great Western Smelting and Refining Company, dated December 5, 1907, one-half your invoice December 3, 1907, United States Navy, \$206.92 and excepted \$103.46, which is one-half of \$206.92.

Q. In other words, that refers to the same date and page of the Great Western delivery and sale to the navy yard on that day?

Mr. KERR.—I object as leading.

(Testimony of Hiram S. House.)

Q. State, summarizing this transaction, what was the part of the proceeds received by the Corder people on this award which was made to the Great Western Smelting and Refining Company?

A. One-half.

Q. They were both bidders in the original transaction, were they?      A. They were.

Mr. ALLEN.—We offer in evidence this particular sheet referred to, [515—463] we offer in evidence at least these two pages. If they have not heretofore been identified and admitted, we offer in evidence the bill of W. A. Corder Company as follows—

Mr. KERR.—Your Honor ruled it all out originally, and now you let it go in, and it will involve us in an investigation of the accounts of the United States Government, which will take two weeks. The Government is not claiming there is anything wrong with this transaction. We have got to go in and investigate each one of these transactions before this jury. They are absolutely foreign to any controversy here. We have got to take these up now, one by one, in the light that the Government let this contract at 12 or 13 or 14 cents, and satisfy the jury whether all these stubs that were taken in it were regular.

By the COURT.—Proceed. Objection overruled and exception allowed.

Mr. MORRIS.—I have been holding a folder here for some time which you examined Mr. House on, Storekeeper's folder 153, which has not been marked



(Testimony of Hiram S. House.)

for identification or as an exhibit.

The COURT.—Let it be marked.

Mr. MORRIS.—I would like for you, you examined on it, I should like for you to have this introduced in evidence. We want to keep track of it. You examined on it.

Mr. ALLEN.—I have no objection to it going in the records.

(Whereupon storekeeper's requisition No. 153 was admitted in evidence and marked Government's Exhibit 70.)

Q. I call your attention to a navy yard folder for requisition No. 304, and I will ask you to identify that as being one of the exhibits taken by you from the navy yard and from the navy pay office as well.

A. Yes, I received it from the navy pay office, and this one from the navy yard. [516—464]

Mr. ALLEN.—I ask that these be offered for identification and stamped, February 5th, 1908.

(Whereupon folders in question was introduced in evidence and marked as Government's Exhibits 71 and 72.)

Mr. ALLEN.—Two memoranda which was proven by Mr. House in reference to requisition No. 169, have been marked as exhibit 26-A and 60-A and admitted in evidence. We now offer them in evidence.

Q. Can you ascertain from that folder the parties who bid on that particular transaction, this is now requisition No. 304, Plaintiff's Exhibit 71 and 72?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Who are the bidders on that particular transaction?

A. The Great Western Smelting and Refining Company and 11.90 for immediate delivery.

Q. The Great Western Smelting and Refining Company, 11.90 immediate delivery?

A. Yes, sir. American Iron and Metal Company at 12½ W. A. Corder Company at 12½ to be delivered on March the 1st. A. Hamback Company "unable to bid." Pacific Engineering Company, "Cannot bid at present."

Q. Are those all the bidders? A. Yes, sir.

Q. W. A. Corder Company and Great Western Smelting and Refining Company were both bidders were they, for this particular award?

A. Yes, sir, and American Iron and Metal Company.

Q. To whom was it awarded?

A. Great Western Smelting and Refining Company.

Q. At what price or figure? A. 11.90.

Q. Are there any other books or any other memoranda in the books of the W. A. Corder Company or the Great Western Smelting and [517—465] Refining Company, which bear on that particular contract? If there are, please find them.

A. There is.

Q. What is the number?

A. This is page 132 Government's Exhibit No. 26, dated March 12, 1908. United States Navy Yard, Bremerton, Washington, under requisition No. 304,

(Testimony of Hiram S. House.)

N. S. F., zinc plates, one-half by 24 by 36, 5,000 pounds at 11.90, \$595. Total dollars, \$1190.

Q. That, then, is the bill of the Great Western is it on that particular award? A. Yes, sir.

Q. Now, then, find what memoranda there is or may be in the books of the W. A. Corder Company in reference to the same transaction?

A. The sales sheet page 723 of Government's Exhibit No. 60, being dated, being sales sheet of W. A. Corder Company, dated March 26th, 1908, sold to Great Western Smelting and Refining Company, one-half sale zinc plates to United States Navy Yard, \$585.

Q. What is that now, a bill of the Corder Company for one-half of the award made on this particular requisition, is that right? A. Yes.

Q. Do the books of the company show what the Corder Company received one-half of the money paid on that transaction?

A. Yes, sir, it shows that it was charged to the Great Western Smelting and Refining Company account, which was ultimately balanced.

Mr. KERR.—Have you offered this in evidence yet?

Mr. ALLEN.—Yes, we offer these particular pages.

Mr. KERR.—This is 372. When you offer that I want you to read to the jury this letter from the Paymaster of the United States Navy, purchasing pay officer, and I also want you to read this [518—466] from the Naval Constructor, United States Navy,



(Testimony of Hiram S. House.)

Chief Bureau, Washington, D. C.

Mr. ALLEN.—I don't intend to read all of them.

Mr. KERR.—I ask you if you will not now read these letters to the jury.

By the COURT.—Proceed.

Mr. KERR.—I want counsel to read these letters, I call your Honor's attention and the jury's attention to the contents of exhibit No. 72.

Q. I call your attention to a folder, apparently a folder taken from one of the navy yard offices, I will ask you to identify that, if you can. This is requisition No. 355, of date March the 6th, 1908.

A. Taken from the Navy Pay Office.

Q. Taken from the Navy Pay Office in the city of Seattle? A. Yes.

Mr. ALLEN.—We ask that that be marked for identification.

By the COURT.—That is exhibit No. 19 already in.

Q. Who were the persons who were bidding in that for that award?

Mr. KERR.—I object to that on the ground it is incompetent, irrelevant and immaterial, no matter involved in this controversy.

The COURT.—Objection overruled and exception allowed.

A. The requisition is for—

Mr. KERR.—I object to the witness reading from something that is not in evidence.

Mr. ALLEN.—We now offer this in evidence. It has been properly identified; it is 19, I think.

The COURT.—It has been admitted.

(Testimony of Hiram S. House.)

Mr. MORRIS.—This is the pay office folder. Have you the folder from the storekeeper's office of the navy yard? [519—467]

A. I have it here.

Q. 359, No. 19.

Mr. MORRIS.—I want the storekeeper's folder.

Q. Taking both of these folders, ascertain for us kindly, and give us the bidders and amounts?

A. You want me to tell what the requisition is for?

Q. Yes, what is the amount?

A. For 1933 boiler zincs, one-half by 6 by 12. Bidders were the Great Western Smelting and Refining Company at 12½ cents a pound, to be delivered at once; W. A. Corder Company at 12½ cents a pound to be delivered in one day; American Iron and Metal Company at 13 cents a pound to be delivered at once.

A. Hamback, "Unable to bid. Do not care."

Q. To whom was that contract awarded?

A. To the Great Western Smelting and Refining Company.

Q. At what figure? A. 12½ cents a pound.

Q. Can you ascertain or have you ascertained from the books of the W. A. Corder Company, or the Great Western Smelting and Refining Company, any further evidence in reference to that particular transaction, and if so, tell the jury what it is?

A. Well, I will have to go back a little bit.

Q. Go back to any part of the memoranda of the Company that you want here.

A. Government's Exhibit No. 17, being the general storekeeper's folder, requisition 193, shows that

(Testimony of Hiram S. House.)

on December 12th, 1912, there was delivered—there was awarded to the Great Western Smelting and Refining Company 4,000 pounds of zinc plate, one-half by 6 by 12, at 16 cents a pound. This same folder shows on the 14th day of December,— [520—468]

Mr. VANDERVEER.—I submit counsel is now asking this witness, one-half hour after your Honor sustained objection to it, the very thing your Honor said once he must not do. What these folders show is a matter of argument to the jury. Counsel is now trying to have this witness make his argument to the jury.

The COURT.—He can read the folders or any part of them, without comment.

Mr. VANDERVEER.—The folders have been read.

Mr. MORRIS.—Is that an exhibit in this case?

A. Yes, sir, No. 17.

The COURT.—Everything that is offered and admitted may be read to the jury, or any part of it.

Q. Do you find in the records of the company, either one of those companies, any reference whatever to this particular transaction we are talking about?

Mr. VANDERVEER.—I object as immaterial whether he does or does not.

The COURT.—Objection overruled and exception allowed.

A. This particular requisition refers to another requisition.

Mr. VANDERVEER.—I object to any testimony.



(Testimony of Hiram S. House.)

on the part of the witness but the particular requisition referred to. Being in evidence—

Q. Read that part of the requisition which you think bears upon the matter I am talking about, and then refer—

Mr. VANDERVEER.—I object to any question upon any conclusion, the witness may arrive at about what it refers to.

Mr. SCHLESINGER.—If your Honor please, I ask permission at this time to make a copy of a document which has been lying on the various tables here, marked “Originals,” and entitled “Cases presented to the Grand Jury at Tacoma.”

Q. Can you find in these volumes any reference, or any volumes of [521—469] the Company with reference to either one of those particular folders?

Mr. VANDERVEER.—I object as immaterial, his conclusion whether it refers to one or the other.

The COURT.—Let him state if he can. Answer the question.

Objection overruled and exception allowed.

A. Yes, sir, by going back.

Q. Well, go back to any matter you want to, and get your date and then go and find it in the books wherever you please. [522—470]

#### SATURDAY MORNING SESSION.

November 1st, 1913, 10 A. M.

Mr. ALLEN.—Calling your Honor’s attention to exhibit “41,” which is two pages in the large ledger of the Matheson & Heggler Zinc Company, brought here by Mr. Nagus, counsel for defendants have

kindly consented to stipulate that Mr. Nagus might make a transcript of these two pages and offer that transcript in evidence as the original record, reserving to the defendants any exceptions they may have as to the materiality of the matter contained therein.

The COURT.—Very well.

Mr. ALLEN.—Now, this peculiar situation has come up. Mr. Spirk, who represents one of the defendants, Mr. Corder, doesn't want in, your Honor, that part of the ledger which was on page 564, I believe it is, and there were some suggestions made at that time about putting it in, and I don't know whether we definitely offered it or not, but we have no objection to it, but if counsel for defense will agree on the matter we would like to have it in.

Mr. SPIRK.—Counsel for Mr. Goldberg suggest we pass the matter temporarily as to including in this transcript of the books of the Matheson & Hegler Zinc Company—we reserve the right at this time, your Honor, to object to inclusion of the transcript of the Corder account in view of the fact my recollection is at the time the evidence was introduced that was not included in the offer.

The COURT.—Very well.

Mr. ALLEN.—The remainder of the exhibit is introduced in evidence, then, by stipulation of counsel.

The COURT.—That is exhibit “41”? [523—471]

Mr. ALLEN.—Exhibit “41”; yes, your Honor.

The COURT.—That already has been admitted, but that is now simply a stipulation that a transcript may be presented to serve the purpose of the original.

Mr. SCHLESINGER.—Yes, your Honor.

Mr. SPIRK.—There is only one item there apparently of the Corder account, but counsel and I may be able to agree upon that.

The COURT.—Let me know about that as I would like to instruct the jury upon that as to the extent that should be considered.

Mr. SPIRK.—I think this, your Honor, in case it should be ruled that should not be included, that portion of the transcript could be cut off.

The COURT.—Very well.

Mr. SPIRK.—I will advise your Honor as to that.

Mr. ALLEN.—The same stipulation, your Honor, just made in the case of “41” applies in the case of “40,” which is a copy of the Matheson & Heggler Zinc Company.

The COURT.—Just let the record show that by agreement of counsel the exhibit “40,” the original may be withdrawn and a copy of the exhibit is filed, and the copy to serve the same purpose as the original.

Mr. SCHLESINGER.—If your Honor please, with respect to exhibit “23” in evidence—

The COURT.—The check?

Mr. SCHLESINGER.—Yes, sir—there were objections made at the time these were offered, but owing to the confusion they were not perhaps properly recorded. It is understood that I may now make my objections.

The COURT.—Proceed.

Mr. SCHLESINGER.—We object, if your Honor



please, to the introduction [524—472] in evidence of a check dated June 2d, 1908, number 4978, in favor of W. A. Corder & Company in the sum of \$4,974.31, and signed by the Great Western Smelting & Refining Company by Emar Goldberg. Our objection to that is based upon the ground that it is subsequent to the alleged conspiracy, and is therefore immaterial, incompetent and irrelevant, it being after the alleged conspiracy had terminated. We make the same objection to check No. 4972, being a check in favor of Emar Goldberg—

The CLERK.—Exhibit “21.”

Mr. SCHLESINGER.—That is exhibit “21.”

The COURT.—Very well.

Mr. SCHLESINGER.—4973, being a check in favor of Emar Goldberg in the sum of \$210 and signed Great Western Smelting & Refining Company, upon the ground that has nothing to do with the transaction in question, does not relate to the alleged conspiracy and is a transaction occurring after the termination of the alleged conspiracy.

And the same objection, your Honor please, to check No. 4972 in favor of Emar Goldberg in the sum of \$500 and signed by Great Western Smelting & Refining Company. We make our objection upon the same ground.

And we further, if your Honor please, object to the introduction and admission in evidence of a check No. 1978, dated Seattle, Washington, June 1st,—

The COURT.—What exhibit is that?

Mr. SCHLESINGER.—That is exhibit “32.”

The COURT.—“32” is a check dated June 1st, 1908.

Mr. SCHLESINGER.—Yes, that is a check, a check payable to E. Goldberg in the sum of \$2,109.60, and signed by W. A. Corder [525—473] Company, by W. A. Corder, manager. Our objection to that is that has no relation to the alleged conspiracy, is not an overt act in furtherance thereof, and is a transaction occurring after the termination of any alleged conspiracy, and therefore is irrelevant, incompetent and immaterial, and this objection, if your Honor please, applies, it may be understood, to all checks and documents introduced in evidence by the Government relating to transactions occurring after the 26th day of May, 1908, and your Honor will make the same ruling heretofore made and we will take an exception.

If your Honor please, we will now reserve to ourselves the right at the close of the Government's case to make a motion to strike all of this from the evidence, and we will wish to argue at some length.

The COURT.—That is a matter that is always proper for the defense. Proceed. The objections to these are overruled and the exhibit admitted.

The CLERK.—How about “21” and “23”?

The COURT.—“21” and “23” were admitted before, “32” is now.

The CLERK.—My records didn't show “21” or “23” admitted.

The COURT.—Mr. Allen, there is exhibit “24” and “34” doesn't seem to have been admitted.

Mr. SCHLESINGER.—Your Honor, it may also be understood that these objections of ours also go to the testimony of the various bank officials concerning the various transactions of these checks.

The COURT.—Those objections are in.

Mr. SCHLESINGER.—There was so much confusion, and the objections were made but don't appear in full.

The COURT.—I understand that all of that evidence went in under your objection. [526—474]

Mr. SCHLESINGER.—Yes, your Honor, that is the understanding, as to the bank officials.

Mr. ALLEN.—What check is this, "24"?

The COURT.—Let the record show that "27" was admitted.

Mr. ALLEN.—"24" has been filed and admitted. Well, we now offer this check under exhibit "24" in evidence, your Honor. It is check for \$336—

The COURT.—Show it to defendant.

Mr. ALLEN.—Signed by Emar Goldberg—signed by the Great Western people and payable to Emar Goldberg.

Mr. SCHLESINGER.—We object, if your Honor please, to the introduction of this certain evidence upon the ground that it is prior to the conspiracy, alleged conspiracy, as laid in the indictment, and therefore is immaterial, irrelevant, incompetent and not within any of the issues.

The COURT.—Admitted, and the jury will consider it is only admitted as a circumstance as indi-



eating the manner of these various acts. Has "30" been admitted?

The CLERK.—Yes, your Honor.

Mr. ALLEN.—How about "34"?

The CLERK.—"34" not admitted.

Mr. ALLEN.—How about "27"?

The COURT.—Admitted.

Mr. ALLEN.—What other missing ones have you?

The CLERK.—I have "29A" and "29B," two checks in the check-book 29.

Mr. RIDDELL.—Those were admitted and shown to the jury.

The CLERK.—"34" that leaves, cash-book.

The COURT.—Your objection, Mr. Schlesinger, to "34," that is cash-book of 1908, that covers that same—

Mr. SCHLESINGER.—Yes. [527—475]

The COURT.—Let the record so show and let that be so admitted.

Mr. ALLEN.—Your Honor, we offer in evidence at this time a certificate of our Secretary of State under seal and signature of October 25th, 1913, certifying to the fact the Great Western Smelting & Refining Company—

Mr. SCHLESINGER.—We are willing to admit, if your Honor please, at all of the times mentioned in the indictment the Great Western Smelting & Refining Company, a corporation, legally transacted business within the state of Washington.

Mr. RIDDELL.—You won't need to put it in, then.

(Testimony of Hiram S. House.)

Mr. SCHLESINGER.—It will be in evidence, your Honor, because it is a stipulation.

Mr. ALLEN.—Stipulated that the Great Western Smelting & Refining Company, at all times alleged in this indictment, was a corporation organized—he doesn't know under what state exactly.

Mr. SCHLESINGER.—I think under the state of Illinois.

Mr. ALLEN.—Of which Mr. Goldberg was manager during this time.

Mr. SCHLESINGER.—Manager in the city of Seattle.

The COURT.—Very well. [528—476]

HIRAM S. HOUSE, on the stand.

Direct Examination (resumed).

(By Mr. ALLEN.)

Q. Mr. House, yesterday I started to ask you in regard to your qualifications, and I think the stipulation shows in the record you are qualified as an expert accountant and bookkeeper. There is no objection to that?

Mr. SCHLESINGER.—Mr. House is a competent accountant.

Mr. MORRIS.—We are willing to admit he is a man of most remarkable ability.

The COURT.—As an accountant?

Mr. MORRIS.—Yes.

The COURT.—All right, proceed.

Mr. ALLEN.—Mr. House, along sometime ago did you make any—calling your attention to Plaintiff's

(Testimony of Hiram S. House.)

Exhibit which has to do with the requisition made for 50,000 pounds of zinc plate on April 1st, 1908, calling your attention to that particular requisition and the statement contained therein to the effect that this requisition was made to fill requisitions of the Atlantic Battleship Squadron, calling your attention to that particular part of that exhibit now in evidence, did you make any search at any time in the records and files of the United States Navy Yard Office at Bremerton with reference to that particular fact?

A. Yes, sir.

Q. With what result?

A. I found no ships' requisitions on file over there.

Mr. SCHLESINGER.—Now, your Honor please, it seems to me that doesn't call for the subject of expert testimony, the fact he may have made a search among certain records. I don't think he [529—477] is entitled to give the result of that search. As I understand the qualifications of accountant are to give the result of certain figures, which figures he ought to have with him to show to the jury, and we object to that as not being a proper question.

The COURT.—Now, if he has familiarized himself with the records in the Navy Office he would be competent to testify as to all of these facts, and the record will so show.

Mr. SCHLESINGER.—The records would be the best evidence.

The COURT.—The jury will not have time to read over all the records. Overruled. Exception.

Mr. ALLEN.—What was the answer?



(Testimony of Hiram S. House.)

A. I found no requisitions on file April 1st, with the exception of one for the "Washington," which was not an Atlantic battleship boat.

Q. It was connected with the Pacific Squadron, was it? A. I believe it was.

Q. And it afterwards joined the Atlantic Squadron, after it came here?

A. I don't know as to that.

Q. Who was with you when you made this search?

A. Why, Mr. Barnes and Mr. Bannon. I made two searches over there. Mr. Barnes was with me once and Mr. Bannon another time.

Q. You spent what length of time in trying to ascertain this fact? A. About a day and a half.

Q. I call your attention now, Mr. House, to Plaintiff's Exhibit No. "7." Have you that Plaintiff's Exhibit Number "7" with you? A. Yes, sir.

Q. Which is the requisition 438 for 50,000 pounds of zinc?

A. This is the Navy Pay Office requisition.

Q. You have there the Navy Pay Office folder? [530—478] A. Yes, sir, for 438.

Q. What is the date of that requisition again?

A. April 1st, 1908.

Q. What is the date of the proposals?

A. April 11, 1908.

Q. What date were the proposals opened and the award made? A. April 15, 1908.

Q. The date of the award, then, is the same date? Is that right? A. Yes, sir.

Q. Who were the bidders on this occasion, partic-

(Testimony of Hiram S. House.)

ularly directing your attention to the Great Western Smelting & Refining Company and the W. A. Corder & Company? Were they both bidders?

A. They were.

Q. State what was the amount, the price bid by each of these men.

A. The Great Western Smelting & Refining Company, by Emar Goldberg, bid 12½ cents on 50,000 pounds of rolled zinc, \$6,250, to be delivered within five days after the award. The W. A. Corder Company bid twelve and six-tenths cents per pound on 50,000 of zinc, \$6,300, to be delivered within five days after date of award.

Q. I see. And the award shows that it was made to the Fowler Metal Company at twelve forty-five; is that true?

A. Yes, sir, to be delivered within five days.

Q. The proposals call for delivery within five days, is that the record of those two particular bidders?

A. Yes, sir.

Q. Did you ascertain from your investigation the date the material was actually delivered at the yard?

A. Government check No. 57, page 118; shows on May 9th a delivery under this requisition 438.

Q. May 9th? [531—479]

A. May 9th, yes, sir.

Q. The award was made on May 15th for delivery in five days? A. April 15th.

Q. April 15th for delivery in five days, and the delivery was made on May 9th, a matter of—

Mr. ALLEN.—Mr. House, in what book or memo-

(Testimony of Hiram S. House.)

randum of the Great Western Company, following the date of this award, do you find the first reference to this particular transaction?

A. The first record is on the 21st of April, 1908, when—

Q. In what book?

A. In check-book, in their check-book, Government's Exhibit Number "29A," check No. 4838, dated April 21, 1908, payable to Dexter Horton & Company, Matheson & Heggler Zinc car, \$2,668.75.

Mr. RIDDELL.—Is the number of the car shown there? A. No.

Mr. ALLEN.—\$2,668.75. Does it indicate payment of draft or anything of that sort?

A. No, it doesn't say.

Q. That has been offered in evidence, your Honor. What is the next memorandum on the books of the Great Western with reference to that particular transaction?

A. Government's Exhibit Number "28," which is a receiving book of the Great Western Smelting & Refining Company, register No. 41.

Q. That is what, now, receiving book of—

A. Of the Great Western Smelting & Refining Company. States on April 29, 1908, from Matheson & Heggler Zinc Company, zinc plate, 5,014, at \$5.80, \$2,981.20, less discount, 8 per cent \$232.06, net \$2,668.75; car I. C. 35,890.

Q. Do those figures accord with the draft to which you just made reference, to the check? [532—480]

A. Same amount, yes.



(Testimony of Hiram S. House.)

Q. That is the Great Western?      A. Yes, sir.

Q. Following the same court, what is the next memorandum in the Great Western's books with reference to that particular transaction?

A. Government's Exhibit Number "25," page—there is three sheets here. It is the second sheet, which is account of W. A. Corder Company on the ledger of the Great Western Smelting & Refining Company. The second item—

Q. What is the date of the item, now?

A. April 20th, 1908.

Q. April 20th.

A. One-half cost car 29,563, \$1,334.37.

Q. You have checked the number of that car with reference to this particular car of zinc? How does it accord?

A. It is a different number of the car, but it is just half the amount of that check.

Q. What is the next reference on the books of the Great Western people with reference to that?

Mr. SPIRK.—Where does that car number show here?      A. Right here (showing).

Mr. SPIRK.—This item here is car 29,563, isn't it?

A. Yes, sir.

Mr. SPIRK.—That is what the record shows, 29,563.      A. Yes.

Mr. ALLEN.—What is the next memorandum on the books of the Great Western with reference to this particular transaction?

A. Government's Exhibit Number "25," the same account, W. A. Corder & Company, shows a credit on

(Testimony of Hiram S. House.)

the 21st of April of \$1,334.37 cash.

Q. How does that cash credit appearing on the books of the Great [533—481] Western, how does that accord with the debit memorandum for one-half of this zinc? A. It is the same amount.

Q. What is the next memorandum you find from the records of books of the Great Western with reference to this transaction?

A. Government's Exhibit No. "30" is a check number 1919 of the W. A. Corder Company, dated April 20, 1908, payable to the Great Western Smelting & Refining Company for \$1,334.37.

Q. Then the dates are in accord and the amount in accord for the payment of one-half of this car of zinc, is that it? A. Yes, sir.

Mr. ALLEN.—What is the next on that memorandum, Mr. House?

A. The next memorandum is Government's Exhibit "29B," which is check 4869 of the Great Western Smelting & Refining Company, dated April 29, 1908, payable to J. W. Allen, agent, car of zinc, 665.66.

Q. Have you checked the time of payment of that check and the time of the arrival of the car and other matters so that you could tell the jury as to whether or not that check is apparently in payment of the freight on this car of zinc?

A. This check is dated the same day that the entry is made in Government's Exhibit Number "28."

Q. That, then, is a check of the Great Western paying for the freight on this particular car of zinc?

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. What entry thereafter do you find on the books of the Great Western with reference to that part of the transaction?

A. Government's Exhibit No. "25," at page 2, which is ledger account of the W. A. Corder Company, on the Great Western Smelting & Refining Company's books, the third item shows a debit to W. A. Corder account on April 30th, one-half freight, car 39,890, \$327.83. [534—482]

Q. What comparison is there between the charge made upon the books of the Great Western at this time with reference to the cost of the freight of that car? A. It is just half.

Q. What memorandum do you now find in the books of the Corder Company, or elsewhere, with reference to this same transaction?

A. That completes the purchase of the zinc.

Q. Referring now to transactions thereafter with reference to the payment, disposition of the funds arising from the sale of this zinc. Take up the first memorandum you find with reference to that.

A. Government's Exhibit No. "27," page 66, which is sales sheets of the Great Western Smelting & Refining Company, dated April 29, 1908, is a charge to the Fowler Metal Company, which is 24 Brannan Street, San Francisco, California, under Government requisition 438 N. S. F., 119 boxes zinc plate  $\frac{1}{2}$  by 6 by 12, 59,575 pounds at \$12.45, \$7,417.09. Then at the bottom is a note, "Ship to U. S. Navy Yard, Bremerton, Washington."



(Testimony of Hiram S. House.)

Q. That is a charge, then, on the books of the Great Western corporation charging the Fowler Metal Company with 59,000 pounds of zinc?

A. Yes, sir.

Q. What next memorandum, or what memorandum do you next find with reference to this transaction?

A. Government's Exhibit "25," page number 1, which is the ledger account of the Fowler Metal Company on the books of the Great Western Smelting & Refining Company, shows the posting of this sales slip. It reads, "April 29, 1908, zinc to Navy, \$7,417.09."

Q. Have you checked the amount of that entry in the ledger of the Great Western against the amount of the check which paid for this car of zinc in this particular requisition? [535—483]

A. I don't quite understand it.

Q. (Question repeated.) Paid by the Government for this car of zinc? A. Yes, sir.

Q. The amounts are the same, are they?

A. Yes, sir.

Q. What entry do you next find in the books with reference to this matter?

A. This book hasn't been offered in evidence, Mr. Allen.

Q. Where did you get that book?

A. Got it from the office of the Great Western Smelting & Refining Company.

Q. That is, the Great Western Smelting & Refining Company of Seattle, Washington?

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. You found it down there among the records?

A. Yes, sir.

Mr. ALLEN.—You admit, Mr. Schlesinger, that is part of your property?

Mr. SCHLESINGER.—Yes, sir, subject to the same objection, your Honor, please.

A. I omitted one thing.

Mr. ALLEN.—Very well.

A. There was one item that I didn't get a few minutes ago that appears here. You want to make this book?

Mr. SCHLESINGER.—Mark that particular page of the book now.

Mr. ALLEN.—You want to take this item up right now? A. Yes.

Q. Let us identify it in the record. What is the book you were just looking at?

A. It is the journal and cash-book of the Great Western Smelting & Refining Company. [536—484]

Mr. SCHLESINGER.—Which particular item is it, Mr. Allen, that you want? (Mr. Allen indicates same.) Under our same objection.

The COURT.—Yes, same ruling.

Mr. ALLEN.—Identify it in the record there. This is cash-book and journal of the Great Western Smelting & Refining Company, and this is page 6 thereof, line—I couldn't figure out.

A. And also page—there is another page there.

(Testimony of Hiram S. House.)

The COURT.—Great Western Smelting & Refining Company?

Mr. ALLEN.—Yes, sir, cash-book and journal.

(Page 6, Plaintiff's Exhibit "73" marked and received in evidence.)

A. Reading from Government's Exhibit Number "73," page 6, on the twelfth line, appears the entry under date of May 15, 1908, "Freight, iron from Frisco, \$185.40, Zinc to Navy Yard, \$60.75, which, extended, \$246.15, which check No. 4,946 was issued for that.

Q. How does that check with any exhibit which has been offered heretofore?

A. Government's Exhibit No. "23," which is check 4946 of the Great Western Smelting & Refining Company, dated May 15, 1908, payable to the Star Steamship Company, for \$246.15, on the back under head of "distribution": Freight on iron, Frisco, \$185.43; U. S. N. Yard, freight on zinc, \$60.75.

Q. What next memorandum do you find?

A. On Government's Exhibit Number "73," page 6, line 14, shows under date of May 15th, 1908, a debit to W. A. Corder, one-half freight paid on zinc to navy yard, \$30.37.

Q. How does that check as regards the amount of the total sum paid?

A. It is just half of the freight to the yard.

Q. What next entry on memorandum do you find with reference to this [537—485] transaction; what one do you find the next?

A. Reading from Government's Exhibit Number



(Testimony of Hiram S. House.)

“73,” page 9, line 2, shows a receipt of cash on June 1st, 1908, from the Fowler Metal Company of \$7,417.09.

Q. What is the date?      A. June 1st.

Q. June 1st shows what sum?

A. By cash from the Fowler Metal of \$7,417.09.

Q. That page has been identified, has it?

A. Yes, sir.

Q. Page 9 of this same record and line—

A. Line 2.

Q. Line 2 of that page 9. What reference to this same transaction do you next find on the books of account?

Mr. VANDERVEER.—We will make the same objection I made several times yesterday, it is not competent for the witness to say what certain things show or to state what his conclusions are regarding the connection between various things.

A. He is reading, I understand, these several exhibits.

Mr. VANDERVEER.—I am objecting to the question. The question is, what next do you find, what reference do you find?

The COURT.—Proceed.

Mr. VANDERVEER.—Note an exception.

The COURT.—Let him read. I don't want the witness to state his conclusion on these matters, but state the subject by item.

A. Government's Exhibit Number “25,” page 1, ledger account of the Fowler Metal Company on the Great Western Smelting & Refining Company's

(Testimony of Hiram S. House.)

books, a credit to the account of Fowler Metal Company, dated June 1st, 1908, \$7,417.09 cash.

Mr. ALLEN.—What is the next entry you find?

A. Government's Exhibit Number "25," page 2, which is the ledger [538—486] account of the W. A. Corder Company on the Great Western Smelting & Refining Company's books, line number 6, is a credit dated April 30, 1908, for \$3,708.55; memorandum, "one-half zinc to Navy, Fowler."

Q. "One-half zinc to Navy, Fowler." How does that check in regard to amount?

A. That is just one-half of the amount received from sale of Fowler zinc.

Q. What memorandum do you next find with reference to it?

A. Reading from Government's Exhibit Number "33," which is sales sheet 828 of the W. A. Corder Company, dated April 30, 1908, a debit to the Great Western Smelting & Refining Company of "one-half your invoice to Navy 1½ by 6 by 12 zinc, \$3,708.55."

Q. How does that check?

A. That is one-half the amount received for the Fowler Metal Zinc.

Q. What item do you next find, or what memorandum, as regards this particular transaction?

A. Reading from Government's Exhibit Number "31," which is the ledger account of the Great Western Smelting & Refining Company on the books of W. A. Corder Company, page 4, on the 16th line, is a charge to the Great Western Smelting & Refining Company, under date of April 30th, zinc \$3,708.55.

(Testimony of Hiram S. House.)

Q. How does that check with the particular car of zinc in amount?

A. Delivered to the Government?

Q. Yes.      A. It is one-half.

Q. What is the next memorandum?

A. Reading from Government's Exhibit Number "23," which is a check number 4978 of the Great Western Smelting & Refining Company, dated June 2d, 1908, to the W. A. Corder Company, in the amount of \$4,974.31.

Q. That is from the Great Western to the Corder Company? [539—487]      A. Yes, sir.

Q. What does that include, what items?

A. That includes, reading from Government's Exhibit Number "31," which is the ledger account of the Great Western Smelting & Refining Company on the W. A. Corder Company's books, page 4, state that \$4,974.31 includes a charge, on page 29, sales sheet 689, one-half zinc plates, Pacific Engineering Company, \$200.28; one-half sale of zinc John Finn Metal Works, \$21.79, total \$222.07. Also a charge on date of March 26, 1908, sales sheet number 723, one-half sales zinc plate to Postal Telegraph, \$10.84.

Q. Without going into these different items, does this book checks \$4,974.31, Plaintiff's Exhibit "23," does that include the balance due to Corder on this zinc and other items?      A. Yes, sir.

Q. Putting it that way?      A. Yes, sir.

Q. Not necessary to go into the other items. What is the next entry you find on the books concerned with reference to this transaction?



(Testimony of Hiram S. House.)

A. Reading from Government's Exhibit Number "32," which is check number 1978, dated June 1st, 1908, of the W. A. Corder Company, payable to E. Goldberg, in the sum of \$2,109.60.

Q. What is the date of that, now? A. June 1st.

Q. What transaction does that refer to?

A. It is a payment by the W. A. Corder Company to Emar Goldberg on the same day this amount was received from the yard.

Q. Are there any other memorandums there with reference to this same transaction? Trace that through.

A. Reading from Government's Exhibit Number "49," which is a deposit ticket of the National Bank of Commerce, which states [540—488] that a deposit to the account of Emar Goldberg on the 2d of June for \$2,109.60, the same amount as the Corder check.

Q. That is the deposit slip of Emar Goldberg in the National Bank of Commerce? A. Yes, sir.

Q. What memorandum do you next find with reference to this particular transaction?

A. Reading from Government's Exhibit Number "51," which is a copy—the originals were offered in evidence and these copies put in—reading from Government's Exhibit Number "51," which is ledger account of Emar Goldberg in the National Bank of Commerce, shows, on the 2d of June, a debit of \$1,479.60.

Mr. SCHLESINGER.—That, of course, your

(Testimony of Hiram S. House.)

Honor please, is subject to the objection we have heretofore made.

The COURT.—Yes.

Mr. ALLEN.—In other words, this copy of the account of Emar Goldberg with the National Bank of Commerce shows that on June 2d—

A. His account was charged—

Mr. SCHLESINGER.—We object to that on the ground it is immaterial, irrelevant and incompetent, nothing to do with any of the issues involved in this cause.

The COURT.—Objection overruled. Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—What comparison do you make between that amount which was charged to the account and that of the check referred to here?

Mr. SCHLESINGER.—Same objection, your Honor please.

The COURT.—Same ruling.

Q. It is \$630 less than the check given him by W. A. Corder Company.

Mr. SCHLESINGER.—Six hundred and how much? A. Thirty dollars. [541—489]

Mr. ALLEN.—That went through Emar Goldberg's personal account?

A. In the National Bank of Commerce, yes, sir.

Q. What reference do you next find in the books concerned with reference to this particular transaction?

A. Reading from Government's Exhibit Number "73," page 9, line 15, under date of June 2d, is a

(Testimony of Hiram S. House.)

credit to the W. A. Corder Company for \$1,479.60.

Mr. SCHLESINGER.—What was that?

Mr. ALLEN.—\$1,479.60. What memorandum do you next find with reference to this transaction?

A. Reading from Government's Exhibit Number "25," page 2, which is the ledger account of the W. A. Corder Company on the Great Western Smelting & Refining Company's books, is a credit, under date of June 2d, 1908, for \$1,479.60 cash.

Mr. SCHLESINGER.—Same objection, if your Honor please, goes to this, of course.

The COURT.—Yes, same ruling.

Mr. ALLEN.—That is a credit, then, upon the books of the Great Western, upon the ledger, a credit to the name of W. A. Corder of \$1,479.60?

A. Yes.

Mr. SCHLESINGER.—Same objection.

The COURT.—Same ruling.

Mr. ALLEN.—And that check is a check which is represented by the personal check of Emar Goldberg?

Mr. SCHLESINGER.—Same objection, if your Honor please.

The COURT.—Yes.

A. Same amount as charged against his bank account on this same day.

Mr. ALLEN.—His personal bank account on this same day. What memorandum do you next find with reference to this transaction?

A. That closes the deal.



(Testimony of Hiram S. House.)

Q. That closes the deal?      A. Yes, sir. [542—490]

Q. What was the aggregate amount of the sales of the Great Western Smelting & Refining Company during this year 1908, approximately, Mr. House, what amount of business did they do?

Mr. SCHLESINGER.—Just a minute. So there will be no confusion about this, the objection which I have heretofore made, insistently made, runs to the introduction in evidence of Plaintiff's Exhibit "48" and Plaintiff's Exhibit "47."

The COURT.—I am satisfied those objections were made.

Mr. SCHLESINGER.—Yes, sir; they were made, and the same ruling.

Mr. ALLEN.—They were admitted in evidence.

Q. What reference do you find with regard to an excess delivery over there in the Navy Yard?

A. Government's Exhibit Number "7" states that the bid of the Fowler Metal Company was for 50,000 pounds of zinc. Government's Exhibit Number "27," which is a sales sheet of the Great Western Smelting & Refining Company, page 66, shows that they delivered 59,575 pounds.

Mr. VANDERVEER.—This, your Honor, is nothing but argument, and I object to it upon that ground. Counsel asked the witness to state what one thing shows, then what another thing shows, for the purpose of getting before the jury the argument which results from the comparison of two things. It

(Testimony of Hiram S. House.)

isn't competent for any expert or anybody else to do that.

The COURT.—Let us proceed.

Mr. VANDERVEER.—I would like an exception.

The COURT.—Proceed. Note an exception.

Mr. ALLEN.—Any further reference to that same transaction regarding zinc? A. No, sir.

Q. Mr. House, I again ask you what was the aggregate amount of the business done by the Great Western during this time, this year [543—491] 1908, approximately?

A. Government's Exhibit Number "27," which are the various sales sheets of the Great Western Smelting & Refining Company, from April 1st, 1908, states that from April 1st, 1908, to April 1st, 1909, their total sales amounted to \$168,098.71.

Q. Mr. House, from the investigation of the books of this concern, did you find an account known as an expense account or—yes, I think designated possibly as an expense account, did you find such an account?

A. They have an expense account.

Q. That has been offered in evidence; I forget the number of the sheet; do you recall the number? (Witness produces same.) Calling your attention to Plaintiff's Exhibit Number "22," which is designated, not an expense account, but "Emar Goldberg, bonus account." I will ask you to tell the jury at what time this bonus account of Emar Goldberg came into existence, so far as you can ascertain from the books of this corporation?

A. On April 23d, 1908.

(Testimony of Hiram S. House.)

Q. On April 23d, 1908. What amount do you find passed to the credit of Emar Goldberg, bonus account? A. \$5,000.

Q. \$5,000. Have you been able to place your hand upon any book of the corporation which explains from which source this \$5,000 came? A. No, sir.

Q. Explain to the jury, now, what you ascertained, if anything, with reference to the checks made upon or against this particular \$5,000 bonus account.

A. They are made to Emar Goldberg in most instances without any explanation outside of just "Emar Goldberg, bonus account."

Q. Calling your attention to different charges against that account, the first is a charge of \$30. Any explanation of that [544—492] in the records of the corporation? A. I found none; no, sir.

Q. Did you look for it?

A. I looked for the check.

Q. How are they all made payable, as a matter of fact?

A. Principally to Emar Goldberg. I don't recall any being payable to anybody else.

Q. How about this \$5,000? A. That is the same.

Q. No explanation on the books of the account?

Mr. SCHLESINGER.—No what, Mr. Allen?

Mr. ALLEN.—Is there any explanation on the books of the company, so far as you could ascertain from that item or any similar item?

Mr. SCHLESINGER.—I certainly object to that, because it is calling clearly for his conclusion. He is entitled to give his conclusion, as I understand, upon



(Testimony of Hiram S. House.)

the basis of some specific figures, but he can't go over a large number of books and say the books don't show this and the books don't show that. I don't think that is material at all.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

Mr. ALLEN.—I call your attention to check 4862 out of check-book of the Great Western Smelting & Refining Company. Is that a check against the account of Emar Goldberg, bonus account?

A. It so states; yes, sir, \$30.

Q. That is drawn to the Great Western Smelting & Refining Company and drawn to Emar Goldberg?

A. Yes, sir.

Mr. SCHLESINGER.—This is all subject to our objection.

The COURT.—Yes, sir.

Mr. ALLEN.—What is the next check you find there? [545—493] A. 4863.

Q. By whom is that drawn, and to whom?

A. Great Western Smelting & Refining Company, payable to Emar Goldberg. The stub of the check is made to Emar Goldberg, bonus account, for \$500.

Q. Who signed this check in the first instance, whose signature is that?

A. Signed by Emar Goldberg.

Q. Manager, and payable to his personal order?

A. Yes, sir.

Q. Do you find any endorsement on the back with reference to anybody else handling that money?

A. No, sir.

(Testimony of Hiram S. House.)

Q. What is the next item on the bonus account?

A. Government's Exhibit "73," page 1, line 13, under date of May 4, 1908, Emar Goldberg, bonus account, with no explanation, \$160, check No. 4892.

Q. No explanation? A. No, sir.

Q. I will ask you whether or not every other item on that page shows an explanation except that?

Mr. SCHLESINGER.—I object to the question as to no explanation. It is immaterial, incompetent and absolutely irrelevant. The books didn't require any explanation.

The COURT.—Let the witness state what the book shows.

Mr. ALLEN.—That is what he is stating, your Honor, that the books don't show anything with regard to it.

The COURT.—Counsel objects to the words "no explanation" being there.

Mr. ALLEN.—State whether there is in this book any statement there as to the character or purpose of that expenditure. [546—494]

A. There is none.

Mr. SCHLESINGER.—Why, now, the book speaks for itself. Now, your Honor, that is true with reference to a million items in the book and a million items in the books of every merchant, real estate men as well as other people.

Mr. ALLEN.—That whole book is offered in evidence. We offer in evidence the memorandum contained in Plaintiff's Exhibit Number "73" at page 1, line 13 thereof.

(Testimony of Hiram S. House.)

The COURT.—Page 1?

Mr. ALLEN.—Page 1, yes, sir.

The COURT.—Page 6, it was before.

Mr. ALLEN.—Well, we were referring to page 6 before.

The COURT.—Line what?      A. 13.

The COURT.—Very well.

Mr. ALLEN.—Calling your attention to the next item, what is the amount and date of that?

A. The amount is \$336, under date of May 18, 1908.

Q. Can you, by reference to the books of the company see if it has any further reference to that amount which was drawn against this excess fund or something?

A. Reading from Government's Exhibit Number "73," page 6, line 20, and under date of May 18th, is an item, "E. Goldberg, bonus account, 356," represented by voucher No. 4951.

Q. What explanation is printed therein with reference to the purpose for which this money was expended?

Mr. SCHLESINGER.—I object to the question—

A. There is none.

Mr. SCHLESINGER.—One moment—on the ground that the item doesn't require explanation, and is calling for a conclusion of the witness.  
[547—495]

The COURT.—I would ask you not to use that "explanation."

Mr. ALLEN.—All right. Does that record show anything with reference to the character or purpose



(Testimony of Hiram S. House.)

for which this money was expended which was drawn from Mr. Goldberg's bonus account?      A. No, sir.

Q. Take the next item.

A. Under date of May 29, 1908, \$200. Reading from Government's Exhibit Number "73," page 8, line 6, is an entry, under date of May 29, E. Goldberg, bonus account, \$200, voucher number 4964.

Mr. ALLEN.—Mr. House, did Mr. Kettlewell ever have anything to do with these books?

Mr. SCHLESINGER.—I object to that as calling for Mr. House's opinion. He has been on the books eight months himself. He doesn't know what Kettlewell has done.

Mr. ALLEN.—I submit he can answer that question.

The COURT.—Proceed with the examination of the witness.

Mr. SCHLESINGER.—I object to that as immaterial.

Mr. SHIPLEY.—If he knows.

The COURT.—There is nothing in the record he ever had possession of these books. He might—

Mr. ALLEN.—How long have you had actual possession of these books, of the Government's exhibit?

A. Since May, 1911.

Q. Had Mr. Kettlewell ever at any time had access to them?

Mr. SCHLESINGER.—Now, of your own personal knowledge of what you have seen.

Mr. ALLEN.—What you have seen?

A. I have never seen him have them.

(Testimony of Hiram S. House.)

Mr. SCHLESINGER.—I move to strike out the answer as not being responsive. [548—496]

Mr. ALLEN.—Well, as a matter of fact, these books have been kept either in your possession or in the custody of the United States District Attorney's office during all that time, have they not?

Mr. SCHLESINGER.—I object to that as being immaterial.

The COURT.—If he knows he can answer.  
swer.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. I had these books for eight months, approximately, working on them. I then boxed them up and nailed up the boxes and stored them away, and the boxes are in the same condition as they were when I left them.

Mr. SCHLESINGER.—You had them for eight months?

The COURT.—Proceed.

Mr. ALLEN.—Referring again to this bonus account. What is the next item you find there charged to Mr. Goldberg, bonus account?

A. Didn't I complete this?

The COURT.—Let me ask, how much—

Mr. ALLEN.—Just two or three more of these items, your Honor.

A. There is just two after this one.

Mr. SCHLESINGER.—You said that you personally have had these books for eight months. You

(Testimony of Hiram S. House.)

don't know how long the officials of the Government, including Mr. Bryan, the detective, had them?

A. He didn't have them at all.

Mr. SCHLESINGER.—Don't you know they have been here for two years, since 1911?

A. Yes, they have been.

Mr. SCHLESINGER.—That is all I want to know.

A. Reading from Government's Exhibit Number "73," page 8, line 6, is entry, under date of May 29th, E. Goldberg, bonus account, \$200, voucher No. 4964. [549—497]

Q. What explanation is there on that?

Mr. SCHLESINGER.—Object to the question as to what explanation was given under your Honor's previous ruling.

The COURT.—Yes, that expression, I think,—

Mr. ALLEN.—Well, read the explanation, if there is one, read the explanation there either on the check or the book account which explains the purpose for which this expenditure was made.

Mr. SCHLESINGER.—I do hope your Honor will again caution my good friend not to use the word "explanation" there.

The COURT.—If there is an explanation there he can say so. Proceed.

Mr. ALLEN.—Read the explanation, if there is any, and if there isn't, say so.

A. There isn't any.

The COURT.—What is that?

A. There isn't any.



(Testimony of Hiram S. House.)

The COURT.—You said a while ago that term should not be used under the objection of counsel. They think it prejudices the jury and it should be eliminated. Let the witness state what appears there, if anything. Proceed.

Mr. ALLEN.—Well, suppose I propounded the question the way your Honor just suggested, what answer could he give?

The COURT.—If there is none he could say so.

Mr. ALLEN.—I thought that is just what he said.

The COURT.—It is your question that they object to.

Mr. SCHLESINGER.—Yes, your Honor.

Mr. ALLEN.—That closes that bonus account does it?

A. No, sir, there is two more items, that is, down to the first of June.

Q. Well, what other item, if any, do you find in this bonus account?

A. Reading from Government's Exhibit Number "22," Emar Goldberg, bonus account, the charge on June 1st, cash \$500. Reading from [550—498] Government's Exhibit Number "73," page 9,—

Mr. SCHLESINGER.—What date are you on now, Mr. House?

A. June 1st.

Mr. SCHLESINGER.—We object to any testimony, if your Honor please, subsequent to May 26th, and particularly subsequent to June 1st.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

(Testimony of Hiram S. House.)

The COURT.—Note an exception.

A. Page 9 of Government's Exhibit Number "73," line 4, is an entry under date of June 1st, 1908, E. Goldberg, bonus account, \$500, voucher number 4972.

Mr. SCHLESINGER.—I might possibly ask here whether it is proposed to go over the bonus account up to the present date, because I might state to you, Mr. House,—

The COURT.—Proceed with the inquiry and see what the next question is.

Mr. ALLEN.—Does this bonus account contain any explanation either in any book or ledger of the concern as to the purpose for which this money was expended?

Mr. SCHLESINGER.—Now, if your Honor please, the same objection I heretofore made.

The COURT.—Yes, I have made that suggestion a dozen times not to use the word "explanation." You can use another term that will get the same information and eliminate the objection which has been made.

Mr. ALLEN.—With all due respect to your Honor, this is an expert accountant, and I am asking him to refer to any book, your Honor, they might have.

The COURT.—Ask him.

Mr. ALLEN.—Can you find anything on the books of accounts of the [551—499] Great Western Smelting & Refining Company,—

The COURT.—Any reference.

Mr. ALLEN.—Any reference, then, your Honor,

(Testimony of Hiram S. House.)

to this \$500 item and the purpose for which it was expended? A. I have not been able to.

Q. Any more of those items?

A. There is one more. Government's Exhibit Number "22," Emar Goldberg, bonus account, a charge under June 1st, 1908, cash \$210.

Q. June what, now?

A. June 1st, the same date. Reading from Government's Exhibit Number "73," page 9, line number 5, under date of June 1st, 1908, E. Goldberg, bonus account, \$210, voucher number 4973.

Q. Do you find in any book or account of the Great Western Smelting & Refining Company any reference to the purpose for which this money may have been used or expended? A. I have not.

Q. You have looked, have you, in all cases, you have followed out these checks and these other matters, have you? A. Yes, sir.

Mr. KERR.—As far as you know, it may have been used in settlement of a damage suit in the Superior Court of this county.

The COURT.—Proceed with the examination.

Mr. ALLEN.—Mr. House, have we omitted any material part of this, so far as you know?

A. Not that I know of.

Mr. ALLEN.—Take the witness.

On cross-examination by Mr. SCHLESINGER, said witness testified as follows:

Q. Mr. House, you have testified here concerning probably a dozen or more of folders. To produce these folders before these men [552—500] how



(Testimony of Hiram S. House.)

many folders have you examined, how many thousands of folders?

A. I didn't understand your question.

Q. (Question repeated.)

A. I have examined the same number I have produced here.

Q. Well, haven't you in the adjoining room perhaps three or four thousand of folders concerning the Navy Pay Office transactions?

A. Oh, not that many; no, sir.

Q. How many have you?

A. Well, I don't know; it will just be a guess.

Q. Well, just approximately.

A. I have both the Navy Pay Office folders and also the navy yard folders.

Q. Does that indicate the number to any intelligent man?

A. Well, I want to explain that I have two folders for the same number. I have perhaps four or five hundred folders of different numbers.

Q. Four or five hundred. And you selected these especially for this case, did you not?

A. I went over them, yes, sir.

Q. Did you select them for presentation in this case?

A. Well, Mr. Allen and I together did, yes, sir.

Q. How many months of labor have you actually expended in this investigation?

A. The entire investigation?

Q. Yes, how many months?

(Testimony of Hiram S. House.)

A. Well, counting the time I have put in on trials and investigating, too, perhaps ten or twelve months.

Q. Ten or twelve months. On this case alone, isn't that true, Mr. House?

A. No, sir, not on this case alone. [553—501]

Q. How much of the time have you put in on this particular case? A. Well, I couldn't tell you.

Q. In investigating this matter you examined the McManus folders, did you not? A. Some of them.

Q. About a dozen or more of them?

A. I suppose so.

Q. Did you receive any assistance from Mr. Kettlewell in that examination, yes or no?

A. I talked the matter over with Mr. Kettlewell.

Q. How many consultations, about, have you had with Mr. Kettlewell during your examination of these various accounts?

A. I didn't keep any record of it.

Q. Approximately how many have you had?

A. I couldn't come within—I don't know how many.

Mr. SCHLESINGER.—That is all.

Mr. KERR.—Let me ask the witness one question.

Q. Mr. House, you went through these records yesterday and picked out, identified certain bids for furnishing of zinc plate to the amount of those bids. Did you make any examination in the course of your service in this case for the purpose of ascertaining whether firms like the Seattle Hardware Company had at any time bid, or near the time mentioned in this indictment, for the furnishing of plate?

(Testimony of Hiram S. House.)

A. I did.

Q. You found that they had bid 12 cents a pound for the furnishing of these plates, didn't you?

A. No, sir.

Q. Not once, but on numerous occasions? [554—502] A. No, sir.

Q. Never found where they bid 12 cents?

A. No, sir; they bid ten and a half on 5,000 pounds and Emar Goldberg bid 15 cents on the same requisition.

Q. Without wasting time, I desire to call your attention to Government's Exhibit Number "58" I think it is.

The COURT.—What folder do you call it?

Mr. KERR.—I am not going into this matter further, your Honor, we will take it up in our defense. I call your attention to requisition number 58, series of 1908, and the bids. I will ask you now to turn to the bid of the Great Western Smelting & Refining Company, or to W. A. Corder & Company; these are the two I want to call your attention to.

A. Did you mean bid or award?

Q. I mean b-i-d, bid, I asked you.

A. I thought you meant award.

Q. Just look at that and see if that bid for 3627 pounds of these plates by the Seattle Hardware Company was not exactly 12 cents a pound?

A. Why, sure it wasn't.

Q. You just figure out and tell me how much it lacked? A. It was 12½ cents.



(Testimony of Hiram S. House.)

Q. Well, maybe your figures are right, but I figured 12 cents.

A. The award was let to Mr. Corder, however, Mr. Kerr.

Q. I understand that, but I am asking you the bid of the Seattle Hardware Company.

A. I was referring to the award to the Seattle Hardware Company.

The COURT.—You better have that identified in the record.

Mr. KERR.—We will put them in later, your Honor.

The COURT.—Very well. [555—503]

Mr. KERR.—I will identify the cover, Mr. Allen. Mark this for identification.

(Folder referred to marked Defendants' Exhibit "10.")

Q. Calling your attention, now, to exhibit "66," another bid for another thousand pounds of these plates, 12½ cents, that is right, isn't it?

A. Yes, sir, they bid 12½ cents on September 26th, 1907.

Q. That is number "66."

A. To whom was that award made, Mr. Kerr?

Q. Did they ever furnish any zinc plates to the Government, the Seattle Hardware Company, or Schwabacher Hardware Company, at 12½ cents.

A. Not that I recall. They furnished some at ten and a half.

Q. They furnished some at twelve and a half, too,

(Testimony of Hiram S. House.)

didn't they, the Seattle Hardware?

A. I don't recall that they did.

Q. And they accepted their bid at twelve and a half?

A. I don't remember that they did.

Q. If they did the Government didn't indict them, to your knowledge?

A. I don't understand any of them are under indictment.

Mr. KERR.—That is all.

Mr. SCHLESINGER.—That is all for the present.

On redirect examination by Mr. ALLEN said witness testified as follows:

Q. In this transaction that was awarded to Cor-der, though, wasn't it?

A. The first one was. I don't recall what that one was.

Q. You don't know whether this is the particular instance, as Mr. Kettlewell says, he changed the bid so as to take it away from [556—504] the Seattle Hardware Company?

Mr. SCHLESINGER.—Your Honor, we will object to that. We show change of bid after awhile as part of our case.

Mr. ALLEN.—All right. That is all. [557—505]

[Testimony of E. Silverstone, for Plaintiff  
(Recalled).]

E. SILVERSTONE, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Mr. Silverstone, you were interrogated yesterday with regard to the deposit of this \$7,400 check in your bank. Since you were here they brought up—this is merely a copy made here, it isn't the original, but you have seen the original, have you?

Mr. SCHLESINGER.—We object to that upon the ground it is not redirect examination.

Mr. ALLEN.—I recalled him.

Mr. SCHLESINGER.—Oh, you call that, as a matter of fact, courtesy?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—Do you recall whether or not that is a copy of the original, do you recall whether it was approximately in that shape (showing paper to witness)?

A. I wasn't shown it, but I believe that is.

Q. You believe that is the copy? A. Yes, sir.

Q. That is June 1st, 1908?

A. That is June 1st, 1908.

Q. This is the copy taken from the bank's record of the deposit slip of the same day showing the zinc item, \$7,417.09? A. Yes, sir.

Q. By comparison of dates, do these dates com-



(Testimony of E. Silverstone.)

pare, and is it the same date that you returned to Mr. Goldberg and had him endorse the back of this check?     A. It is.

Q. The same day, June 1st, 1908. He had the check in his possession [558—506] at that time, did he?     A. Yes, sir.

Mr. SCHLESINGER.—This is subject, your Honor please, to our same objection.

The COURT.—Yes, I so understand. Exception allowed.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER. — No cross-examination.  
[559—507]

**[Testimony of Ray Spear, for Plaintiff (Recalled).]**

RAY SPEAR, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Paymaster Spear, without any intention on my part of being discourteous, it occurs to me I didn't have you state, for the information of the jury, your rank and service in the United States Navy. How long have you been in the Navy?

A. Approximately fifteen years. I have the rank of Lieutenant-Commander.

Q. What is that rank equivalent to in the Army, comparable to?

A. It carries with it the relative rank of Major of the United States Army.

Q. Mr. Spear, I would like to have that exhibit,

(Testimony of Ray Spear.)

which is the letter written by—Mr. House, have you that letter written by Goldberg to Matheson & Heggler people? (Letter produced.) Calling your attention to Plaintiff's Exhibit Number "37," which is a letter from the Great Western Smelting & Refining Company, signed by Emar Goldberg, manager, addressed to the Matheson & Heggler Zinc Company, La Salle, Illinois, in which this statement is made: "There is considerably more zinc than the Government ordered, but the navy yard—this is considerably more zinc than the Government ordered, but the navy yard people here have asked us to carry this in stock on account of the battleship fleet coming here, and for that reason we have today wired you asking for price on another car." That is dated March 16th, 1908. Did you ever advise Mr. Emar Goldberg, or Mr. Corder, Mr. Emar Goldberg, that you wished him to keep this zinc in stock, the fleet was coming here?

A. Personally, no, sir. [560—508]

Mr. SCHLESINGER.—We object to that, if your Honor please, as immaterial, irrelevant and incompetent, and what has that to do with the matter at all?

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Personally I recall no such conversation with either one of the gentlemen.

Mr. SCHLESINGER.—That is, you mean on that subject?

A. Yes, sir.

(Testimony of Ray Spear.)

Mr. ALLEN.—You are quite sure that no such conversation took place, are you, Mr. Spear?

A. With me, yes, sir.

Q. Mr. Spear, state to the jury the system which was in vogue, sometimes designated as the “alarm system,” with reference to papers or memorandum that might come to your desk in the course of the day’s business which you found in effect when you went into the Bremerton Navy Yard.

A. I found it a rule of the office, and the practice of the various clerks, including Mr. Meyer as Chief Clerk, that whenever any special subject was laid on my desk, or special letter, or any matter that required my personal consideration, that besides drafting the original letter themselves they would attach to the top of that letter a written brief statement asking me to please read this, or marking it “urgent,” or giving me some reason to pay particular attention to that particular matter; as you know that in a large office a great deal of the work is routine; the blank speaks for itself, just merely requiring signature; but a lot of matters that passed through required a lot of careful consideration before you are willing to put your name on it. [561—509]

Mr. ALLEN.—May it please the Court, for the information of the Court, I want to call your Honor’s attention to section 3722, the Revised Statute, which reads as follows: “The chief of a bureau of the Navy Department, in asking for naval supplies, shall be at liberty—”

Mr. SCHLESINGER.—That is section 3722 of



(Testimony of Ray Spear.)

the Revised Statutes?

Mr. ALLEN.—Yes.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Now, Mr. Spear, is it not a fact that during the years 1907, 1908 and 1909 and 1910 the total amount of sales of the Great Western Smelting Company, through this Navy Pay Office, did not exceed the total sum of \$22,000, or the rate of about \$5,000 a year?

A. I have never calculated it, and I couldn't speak as to the year 1907 for the reason I wasn't up here.

Q. What would you say as to 1908, 1909 and 1910?

A. That would be merely a matter of curious statistics, Mr. Schlesinger. I have never gone in it at all.

Q. And do you know that during those years it amounted to only about \$15,000, including this transaction in dispute? A. The Seattle Pay Office?

Q. Yes, the Navy Pay Office.

A. They provide us with a very small quantity of our material, comparatively speaking.

Q. And do you not know, Mr. Spear, in that same connection—

Mr. ALLEN.—You say they; you mean the Navy Pay Office?

A. Yes, sir.

Mr. SCHLESINGER.—I am talking of the Navy Pay Office, with which you were connected and with which Mr. Kettlewell was connected? [562—510]

A. I wasn't connected with it, you understand, in any way.

(Testimony of Ray Spear.)

Q. Do you know the total sales of metals through that Navy Pay Office during that same length of time? A. No, sir, I haven't the slightest idea.

Q. Do you not know the amount is nearly \$750,000?

A. I know nothing about it; no sir.

Q. In other words, do you not know that the business of the Great Western Smelting Company was very inconsiderable as compared with the business done there by various other concerns throughout the country? A. Oh, I have no doubt of that.

Q. No doubt. Mr. Spear, you are still in the employ of the Government, are you not? A. Yes, sir.

Q. You have not been discharged for any incompetency? A. No, sir.

Q. And no complaints have been made against you? A. No, sir.

Q. Where are you now stationed, please, Mr. Spear? A. At Norfolk, Virginia.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. VANDERVEER said witness testified as follows:

Q. The Government reserves the right to reject at any time any and all bids for material?

A. Before award.

Q. What officer of the Government exercises the discretion to do that?

A. Well, that all depends on circumstances. The Purchasing Pay Officer here in the city could exercise his judgment regarding [563—511] If he were in doubt he would probably send it over to me

(Testimony of Ray Spear.)

at the navy yard. That would have been his practice, for recommendation.

Q. That, in 1910, would be either you or Mr. Orr?

A. Yes, sir. and if I didn't care to pass on it I would send it back to the Navy Department and let them act on it.

Q. Now, I understand the regulations, and rules and orders of the Department, regarding which you were examined at some length, required that the fullest competition be solicited wherever possible?

A. Yes, sir.

Q. Whether the purchase be advertised, or whether it be an open purchase?

A. That doesn't make any difference.

Q. That is true?

A. Yes, that is true regarding all purchases.

Q. And I observed in a number of folders which you were shown, which you identified, that in instances proposals were returned without any bid. That is done, is it not, at the request of the Navy Pay Officer, or of your office?

A. Yes, it is merely to show the firms that we did give the firms the opportunity.

Q. For the purpose of making a record in your office showing that competition was solicited, and that the proposals were sent broadcast to various dealers of metals, or whatever it was you were proposing to purchase? A. Yes, sir.

Q. Whenever that is shown it is immaterial, is it not, Mr. Spear, whether you actually received one, two, three, four or half a dozen bids? A. Yes.



(Testimony of Ray Spear.)

Q. So long as it appears that competition was solicited and the [564—512] proposals were sent to the proper dealers?

A. I will modify that by saying yes, provided that the price obtained from possibly the one bidder is a fair price.

Q. Oh, well—

A. It is entirely discretionary with the Government whether they accept or reject that one bid.

Q. If there were six bidders, and didn't get a fair price from all of them, you might reject them all, which gave that right at all times?      A. Yes, sir.

Q. The matter of fairness of price is quite separate and apart from the question I meant to ask you.

A. I see your point.

Q. Regarding the number of bidders, it is immaterial whether there is one, two, three or four, whenever it appears the proposals were sent to the proper dealers and proper competition solicited?

A. Yes, sir, that is correct.

Q. So that in the case which we have been considering, I think you had been in the courtroom part of the time, Mr. Spear, it is immaterial whether Mr. Goldberg bid alone, whether Mr. Corder bid with him, or whether other people bid or did not bid, so long as it appeared that the proposals were sent to these people and the other people to whom they should properly be sent?      A. Yes, sir.

Mr. MORRIS.—That is all.

Mr. ALLEN.—That is all, Mr. Spear. [565—513]

[**Testimony of J. A. Kettlewell, for Plaintiff  
(Recalled).**]

J. A. KETTLEWELL, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. I just wanted to ask you one more question, and I think the matter wasn't as explicit as I would have liked. In the case of requisition 438, which is requisition for 50,000 pounds of zinc plate, started on its way April 1st, 1908, and in which the proposals were sent out or taken around on April 11th of the same month, and thereafter the award made on April 15th of the same month, I want to ask you whether there was any advertisement made in the case of that particular—

Mr. SCHLESINGER.—I object to that upon the ground the record is the best evidence and not the recollection of this witness.

The COURT.—He may answer if he knows.

Mr. SCHLESINGER.—The record shows there wasn't any, it was dispensed with by the Secretary of the Navy. Our objection is, it is a matter of inquiry not in dispute. The Secretary of the Navy waived the necessity of an advertisement.

Mr. ALLEN.—If there is no objection to it you may answer the question.

Mr. SCHLESINGER.—The testimony won't help the matter any.

The COURT.—He may answer, if he knows.

(Testimony of J. A. Kettlewell.)

Mr. SCHLESINGER.—Exception.

A. The bids were advertised; some of them were sent out in the usual manner or advertising, through the local office.

Mr. ALLEN.—But there was no publication in the papers?

A. Not public in the papers, no sir.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER.—No questions. [566—514]

Mr. ALLEN.—We now offer again, the record, I think, is clear, but we now offer again, your Honor, in evidence all of those exhibits which have been identified and which are now not properly admitted in evidence, if there are any, and reserving at this time to read—

Mr. RIDDELL.—That stipulation was that Mr. House might make out a schedule showing what the exhibit shows, and Mr. House was busy with Mr. Schlesinger last night showing him papers all evening, and Mr. Schlesinger has very kindly consented with me to put it in Monday.

Mr. SCHLESINGER.—That is, subject to my examination.

Mr. RIDDELL.—Oh, certainly.

Mr. ALLEN.—But our records shall be kept open for that purpose?

Mr. SCHLESINGER.—For that purpose, certainly.

Mr. ALLEN.—That your Honor, covers the matter of the sales of zinc by these concerns during the



month, I think, of April, was it not, and for the month which preceded, which Mr. House was to summarize in one plain sheet?

Mr. SCHLESINGER.—That is subject, of course, to our objection to the materiality.

The COURT.—A summary of the various exhibits?

Mr. ALLEN.—No, your Honor, it was a tabulated statement of the sales made by Corder and Goldberg, as shown by their books, to establish the matter of price.

The COURT.—I mean the exhibits which have been read to the jury.

Mr. ALLEN.—Well, it includes others which have not been read as regards this matter of price, as shown by their books, and counsel has consented—

The COURT.—It is all based upon exhibits which are before the Court now?

Mr. ALLEN.—No, it includes some which are not before the Court. [567—515]

Mr. RIDDELL.—It includes some not actually received in evidence, but read yesterday.

The COURT.—It must be evidence that is before the Court so the jury may have access to this same evidence for the purpose of verifying the tabulated statement.

Mr. ALLEN.—So we will understand each other, these are prices shown in the sales by Corder & Company and by the Great Western Company to various individuals for the purpose of establishing a price during this period.

The COURT.—I understand your purpose. What are you going to base it on?

Mr. SCHLESINGER.—I was about to say, they were submitted to be in the form of a statement properly made out on Monday morning, and we will waive the formality—

The COURT.—I want to know now, do I understand the Government's testimony connects, then, with this?

Mr. SCHLESINGER.—Our objection will only go to the materiality of the evidence offered.

The COURT.—Well, all right. I want to be clear whether there is any objection to any items being included in this statement which is not disclosed by some exhibit which is before the Court now?

Mr. SCHLESINGER.—Well, I understand they will be here in the form of exhibits, will they not, Mr. House, so that question will not arise.

The COURT.—That is what I want to know. I think we ought to limit it, unless they are confined to exhibits before the Court, so the jury can verify this statement. This is for the purpose of assisting the jury.

Mr. SCHLESINGER.—We will want the basic documents themselves. [568—516]

Mr. RIDDELL.—Yes, they are all in evidence.

The COURT.—I want all these exhibits before the Court, which are identified as exhibits and presented in testimony.

Mr. ALLEN.—With our record held open for that purpose, your Honor, why, the Government will rest at this time.

(WHEREUPON PLAINTIFF RESTED ITS CASE IN CHIEF.)

By the COURT.—Some suggestion was made yesterday, I think, as to some argument that you desired to present.

Mr. SCHLESINGER.—Yes, sir.

The COURT.—And how long would you expect to take in that?

Mr. SCHLESINGER.—I think about one hour, your Honor, or perhaps less than that.

The COURT.—Then, with the understanding the Government rests now with this just one thing of presenting a tabulated statement, we will not hold court this afternoon.

Mr. VANDERVEER.—I would like to be heard briefly on a motion. I would like to know by Monday whether I have any further interest in the case. I think I could present my motion in a very few minutes for Mr. Corder.

The COURT.—Very well, I will take that up now.  
(Usual caution to jury.)

(Jury withdrawn.)

Mr. VANDERVEER.—My motion, your Honor, is a motion to dismiss this case as to the defendant W. A. Corder, or a challenge to the [569—517] sufficiency of the evidence. The defendant Corder is accused of having conspired with two men in the Government employ. He is not accused of having conspired with Mr. Goldberg and even if it appeared here by any evidence that he had conspired with Mr. Goldberg that evidence would not sustain this indictment.



The COURT.—The Government resists the motion?

Mr. ALLEN.—Certainly.

The COURT.—I don't think the Court would be justified at this time to say that there isn't sufficient evidence at this stage of the proceeding to receive further consideration by the Court or jury. Without going into any analysis of the testimony as I understand it to the application of the law, as I feel, must be given to the jury. At this time, at least, the motion ought to be denied. It might be that a further development of this trial might place the matter differently before it reaches the jury, but at this stage of the proceeding I don't think so. Court stands adjourned until ten o'clock Monday morning. [570—518]

Mr. ALLEN.—The Government is now prepared and is ready to furnish that statement or compilation, which, in the record the other day it reserved the right to offer in evidence, this compilation of the sales made by Mr. House and we now offer that in evidence at this time.

The COURT.—Any objection?

Mr. ALLEN.—Mr. House, that is correct, is it, that compilation?

Mr. HOUSE.—Yes, sir.

Mr. SHIPLEY.—That is the compilation we stipulated about?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—That is a compilation of the evidence that has already been submitted?

Mr. RIDDELL.—That is a compilation of the

evidence that has already been submitted, yes, sir.

Mr. VANDERVEER.—Unless the rejections are shown we will object to it being offered in evidence, otherwise it would be misleading. It would seem to indicate, without the rejections shown, that the amounts delivered were always accepted. It isn't a fact.

Mr. ALLEN.—In answer to Mr. Vanderveer's suggestion, this was originally only intended as a synopsis, as it were, of a schedule of prices—

Mr. MORRIS.—We can't hear.

Mr. ALLEN.—I was suggesting to the Court this was designed merely for a schedule of prices shown by the books of the two defendants, and Mr. House has not included that. It was not with any wish on our part to include it as a matter of record. If you have, Mr. Vanderveer, anything to add to it as a memorandum of record we have no objection.

Mr. VANDERVEER.—You have all our books, Mr. Allen. We haven't seen them for several years. That ought to be made up correctly to show the amounts delivered; it doesn't; it shows them incorrectly. [571—519]

Mr. RIDDELL.—I think it does. You wanted to show Goldberg's rejections as well as Corder's.

Mr. VANDERVEER.—Of course, I am not concerned with Mr. Goldberg.

Mr. RIDDELL.—Just make a little circle around here (showing).

Mr. SCHLESINGER.—Your Honor, we are also to introduce in evidence certain illustrative charts, and by account of Mr. Riddell and Mr. Allen, upon

that understanding we have no objections to this going in by way of illustration of their theory.

The COURT.—This, as I understand, is based upon evidence before the jury.

Mr. SCHLESINGER.—Simply to illustrate the theory of the Government, and we will have one to illustrate the theory of the defense ourselves.

The COURT.—I simply want counsel on both sides to understand these compilations must be based all upon evidence that goes before the jury. This is for the purpose of assisting the jury in finding what the evidence actually is.

Mr. KERR.—We don't, of course, consent that represents all of the issues which are essential for this jury to know. We haven't any objection to the Government introducing this.

The COURT.—I simply want anything and everything that goes in the statement to be based upon the evidence which is before the jury.

Mr. SCHLESINGER.—I haven't, your Honor please, examined this, but I assume that this simply contains items already in evidence.

The COURT.—Yes, that is my understanding.

Mr. SCHLESINGER.—Is that a fact, Mr. House?

Mr. HOUSE.—The way I understand it, yes, sir.

The COURT.—I wouldn't want to effect a rule which would allow the parties to put in a statement of what the books show without the books being in evidence. [572—520]

Mr. SCHLESINGER.—I was going to say, your Honor, it seems to me we ought to check up the



items appearing on this chart and see whether they do cover items in evidence.

The COURT.—Mr. House testified they do.

Mr. HOUSE.—They are in these books.

Mr. SCHLESINGER.—The point is, did you make up this chart from matters solely admitted in evidence?

Mr. HOUSE.—The books have been admitted in evidence.

Mr. SCHLESINGER.—Not all of the books have been admitted in evidence. Only certain pages of those books have been admitted in evidence.

Mr. KERR.—I think your Honor ought to give us an opportunity to examine it.

The COURT.—Both sides understand the position of the Court. This is simply for the purpose of enabling the jury to find the evidence as it actually exists, and it is not evidence itself.

Mr. ALLEN.—The compilation?

The COURT.—Yes, that is the idea, and I simply want the compilation based upon the evidence.

Mr. ALLEN.—If the Court please, to supplement this, there are in the hands now of Mr. Meyer about five or six of these folders—

Mr. MORRIS.—Just wait and let us examine these and we will be through in just a moment.

Mr. ALLEN.—May it please the Court, now I have here, your Honor, five folders, one requisition number 76, another number 58, and another number 399, another 154, another requisition number 153, and also requisition 444, just handed me by Mr. House. These requisitions, your Honor, are the

only requisitions which were not, I believe, formally introduced in evidence to which this chart refers. They were referred to by Mr. House and Mr. [573—521] Riddell in their examination, but not actually received in evidence, and I now offer these in evidence to supplement this chart so if the jury wish to refer from this chart to these folders they may do so.

Mr. SCHLESINGER.—No objection.

The COURT.—What are those numbers?

Mr. ALLEN.—Requisition number 76 of series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "74.")

Mr. ALLEN.—Requisition number 58, series 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "75.")

Mr. ALLEN.—Requisition number 399 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "76.")

Mr. ALLEN.—Requisition number 154 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "77.")

Mr. ALLEN.—Requisition number 154 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "78.")

Mr. ALLEN.—Requisition number 444, that is of the series of 1908.

(Folder referred to received in evidence and

marked Plaintiff's Exhibit "79.")

The COURT.—They will all be admitted.

Mr. ALLEN.—The sheets now offered in evidence will be exhibit number "80." [574—522]

The COURT.—Now, that is the—

Mr. ALLEN.—That is a sheet, a compilation, as it were.

The COURT.—How many sheets are there?

Mr. ALLEN.—There are two sheets here.

The COURT.—Pin them together. Admitted.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "80.")

Mr. ALLEN.—Mr. House has just added the rejected objection referred to by Mr. Vanderveer.

The COURT.—Proceed.

Mr. SCHLESINGER.—Your Honor, we have certain motions to make. Will your Honor excuse the jury whilst they are being made?

(Usual caution to jury.)

(Jury withdrawn.)

Mr. SCHLESINGER.—Your Honor please, defendants at this time move to strike all evidence, whether oral or documentary, of acts occurring subsequent to May 26th, 1908, upon the ground that the alleged conspiracy here terminated here, as shown by the undisputed evidence of the Government, on the 26th day of May, 1908.

The defendants also move to dismiss the indictment and for peremptory instruction of acquittal, upon the ground that no overt act is either alleged in the indictment or shown by the evidence to have been committed within three years next preceding



the filing of the indictment.

Mr. SCHLESINGER.—In order to have the record straight, may I supplement the motion to strike out by specifying each particular check itself at some future time? [575—523]

The COURT.—Oh, yes, it is immaterial, because the motion goes to all of the testimony introduced subject to within a certain time.

Mr. SCHLESINGER.—Yes, sir, subsequent to the 26th of May.

Mr. SCHLESINGER.—Your Honor denies both motions?

The COURT.—Yes, sir.

Mr. SCHLESINGER.—Exception.

(Jury recalled.)

(Usual caution to jury.) [576—524]

#### OPENING STATEMENT ON BEHALF OF THE DEFENDANTS BY MR. SHIPLEY.

Mr. SPIRK.—May it please the Court, before the testimony is gone into I desire to call the Court's attention to this transcript of the record which purports to be a tabulation of the sales sheets and other documents introduced by the Government. It has been difficult to make a perfect examination in so short a time. I notice, in examining the various proposals in the folders, that the time stated in those proposals does not appear upon this tabulation, and the jury might draw the inference from this, without reference to the enclosures in the folders, these amounts which were bid by the various individuals were upon the same forms as the bid of the Great Western Smelting & Refining Company and W. A.

Corder Company. A little notation up here (showing). I submit to the Court that ought to be shown opposite each item clearly and distinctly so that the jury may understand, by going over this tabulated statement, what the difference in the bids was.

Mr. RIDDELL.—It does.

Mr. SPIRK.—Just a mere notation under the caption.

The COURT.—You gentlemen went over that several times.

Mr. SCHLESINGER.—Your Honor, I want to say now, in view of the apparent position that has been taken here by the Government, that I will not consent to this chart being put in evidence until I have had a chance to check it up with these various folders, and I have had no opportunity as yet.

The COURT.—Just what is your objection, Mr. Spirk?

Mr. SPIRK.—My objection, your Honor, is simply this: I have no objection if your Honor thinks that one not an accountant and [577—525] familiar with the Government's records can take that tabulated statement, and appreciate the difference in the items of these respective bids and respective of delivery in order that that comparison may be made on price bid on this particular delivery.

Mr. RIDDELL.—How can it be made more fair for you?

Mr. SPIRK.—I just submitted it to the Court.

The COURT.—Now, I think that after counsel get through with the argument here and present their various theories in relation to this I would be able

to produce an intelligent result, produced with the aid of the papers and the exhibits, and the jury is just as intelligent with relation to that as I am.

Mr. SPIRK.—I say, if, by examination of that, in light of counsel's explanation, that can be understood I have no objection to it. All I want is the jury may have these references so they can see the distinguishing—

The COURT.—Mr. Schlesinger, is there anything further in your mind now than has been conceded here?

Mr. SCHLESINGER.—I simply want the statement of Mr. Allen that only embraces the items testified to by Mr. House.

The COURT.—I will say this, that this is admitted upon the theory that it contains only reference to testimony which is included in exhibits before the court and jury now.

Mr. SCHLESINGER.—And your Honor will so instruct the jury?

The COURT.—Why, certainly.

Mr. SCHLESINGER.—If that is so we are satisfied.

Mr. SHIPLEY.—Our understanding is this is a mere capitulation from the evidence before the jury.

The COURT.—Yes, simply an index.

Mr. RIDDELL.—It may seem rather captious, but some of it wasn't really read by Mr. House; some I read.

The COURT.—But it is included from the evidence so that counsel [578—526] and jury know?



(Testimony of Hiram S. House.)

Mr. RIDDELL.—Yes, it is included.

The COURT.—Proceed.

[**Testimony of Hiram S. House, for Defendants.**]

HIRAM S. HOUSE, called as a witness on behalf of the defendants, being previously sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My full name is Hiram S. House. I am the same Mr. House who was offered as a witness and testified on behalf of the Government in the Government case in chief. I obtained the requisition or folder from the Navy Pay Office in Seattle, and it has been in my possession all the time since I secured it; that is requisition number 179, series of 1911. This is a folder containing requisition number 179, dated April 15th, 1911, asking for 500 feet of two inch rubber hose for flexible tubing.

Mr. MORRIS.—Now, your Honor, we desire to have said folder identified exhibit “O.”

(Folder referred to marked Defendants’ Identification “O.”)

This other folder is the yard folder for requisition number 153-L, series of 1910, dated February 5th, 1910, asking for 3100 pounds of bolts and nuts of various sizes. I telephoned to the navy yard for this for Mr. Meyer just two or three days ago. It came through the mail. I did not examine it when it came over—I just gave it to him. There is papers in there that should be there, [579—527] and

(Testimony of Hiram S. House.)

there are no papers there that should not be there that I know of.

Mr. MORRIS.—Now, your Honor please, we would like to have this folder number 153-L marked for identification.

(Folder referred to marked Defendants' Identification "I.")

The folder that my attention is now directed is yard folder for contract number 146. It came into my possession a few days ago. I received it from the navy yard. I did not look into the folder when it came. I got it from Mr. Meyer. I see nothing irregular in it at the present time. It appears to contain the papers that should be in it. The date is November 9th, 1910.

Mr. MORRIS.—We desire at this time to have said folder marked for identification.

(Folder referred to marked Defendants' Identification "Q.")

The folder I now hold in my hand is yard folder for contract number 10,058. The folder came from the navy yard at Bremerton. I had this folder for quite a while. I got it along in April or May, 1911. It has been in my possession ever since that time. It was delivered into my possession by someone connected with the navy yard. It is a storekeeper's folder. It is in the same condition it was when it was delivered to me. I let Mr. Meyer have it this morning, in this Court. I did not put any particular mark on these particular papers. It looks as though it might be in the same condition now that it was

(Testimony of Hiram S. House.)

when I turned it over to the defendant Meyer. It is dated October 27th, 1909.

Mr. MORRIS.—We desire to have said folder marked for identification.

(Folder referred to marked Defendants' Identification "R.")

Mr. MORRIS.—Is it your pleasure to make the examination suggested [580—528] by the learned gentleman representing the Government?

A. It makes no difference to me.

Mr. SCHLESINGER. — Did Mr. Kettlewell handle all these things here to-day, Mr. House?

A. No, sir.

Q. Sure of that?

A. They have been in the courtroom all the time.

Mr. MORRIS.—Again directing your attention to a folder (handing same to witness), kindly examine same. State to the Court and jury what the paper is you now hold in your possession.

A. This is the yard folder for contract number 13,704 with the Western Hardware & Metal Company, dated September 12th, 1910.

The COURT.—13,074?

A. 13,704.

The COURT.—Dated—

A. September 12, 1910.

Mr. MORRIS.—From where did you secure said folder?

A. Navy yard at Bremerton.

Q. When? A. Just a few days ago.

Q. Is it in the same condition at this time it was



(Testimony of Hiram S. House.)

at the time it was received by you at the navy yard?

A. Apparently so.

Q. Did it come from the Storekeeper's Department of the navy yard?

A. Yes, sir, I telephoned for it for Mr. Meyer. I didn't telephone for these, either, I sent a memorandum over asking them to send them over.

Q. Yes, sir. Now, we desire at this time to have said folder marked for identification, your Honor, defendants' identified exhibit "S."

(Folder referred to marked Defendants' Exhibit "S" for identification.) [581—529]

Q. Mr. House, again directing your attention to a folder, kindly examine same (handing same to witness). Are you familiar with the folder which you now hold in your hand?

A. I never looked inside of it before, I don't believe.

Q. From where did you secure said folder?

A. From the navy yard at Bremerton.

Q. When? A. Just a few days ago.

Q. Is it in the same condition now that it was when you received it from the navy yard?

A. Apparently so.

Q. And you delivered that folder to Mr. Meyer?

A. This morning, yes, sir.

Q. This morning here in the courtroom?

A. Well, I guess it was since lunch time.

Q. Since lunch time, yes.

The COURT.—What is that?

A. It is the yard folder for contract number 12,529

(Testimony of Hiram S. House.)

with Richard B. Sherman, dated January 10, 1910.

Mr. MORRIS.—We would like to have said folder identified.

(Folder referred to marked Defendants' Identification "T.")

Q. Mr. House, again directing your attention to a folder (handing same to witness), kindly examine same and state to the Court what it is, if you know.

A. This is the yard folder for contract number O-8188, contract with Richard B. Sherman, dated January 11, 1910.

Q. When did said folder come into your possession? A. Just a few days ago.

Q. And you secured it from where?

A. Navy Yard at Bremerton. [582—530]

Q. And has it been in your possession ever since you secured it from the navy yard at Bremerton?

A. Until I brought it in Court here this afternoon.

Q. This afternoon. And you then delivered it to the defendant Meyer? A. Yes, sir.

Q. Is said folder in the same condition at the present time that it was in when you received it from the navy yard at Bremerton? A. Apparently so.

Mr. MORRIS.—We would like to have said folder marked for identification, your Honor please.

(Folder referred to marked Defendants' Identification "U.")

Q. Mr. House, I again direct your attention to a number of sheets fastened together with a red ribbon (handing same to witness). Will you kindly examine same? Do you know what that bunch of

(Testimony of Hiram S. House.)

papers represent?      A. Yes, sir.

Q. Have they been in your possession previous to this time?      A. Yes, sir.

Q. From where did you secure them?

A. Navy yard.

Q. At Bremerton?      A. Yes, sir.

Q. When?      A. About two weeks ago.

Q. Are they now in the same condition as they were when you secured them two weeks ago from the Navy Yard at Bremerton?

A. I don't notice any change.

Q. Have they been in your possession ever since you secured them from the Navy Yard at Bremerton?  
[583—531]

A. Until to-day, yes, sir.

Q. And to-day in whose possession—to whom did you deliver them?      A. Mr. Meyer.

Q. Mr. Meyer. Now will you kindly state to the Court and jury what those papers are.

A. This is a requisition from the United States ship "Washington" for supplies.

Q. United States ship "Washington"?

A. Dated June 14, 1908.

Q. They are what is known as ship's requisition, is it?      A. Yes, sir.

COURT.—June, 1908?

A. June 14, 1908.

Mr. ALLEN.—What number was it, Mr. House?

A. 75, ship's requisition number 75.

Mr. MORRIS.—I understood you to state 75 is the ship's number?



(Testimony of Hiram S. House.)

A. Yes, sir.

Q. Not a serial number?

A. No, it is a ship's number.

Mr. SHIPLEY.—Not a storekeeper's number, in other words?

A. No.

Mr. MORRIS.—At this time, your Honor, we would like to have said bunch of papers identified.

(Papers referred to marked Defendants' Identification "V.")

Q. (Mr. HOUSE.) I again direct your attention to a folder (handing same to witness). Kindly examine same. Are you familiar with that folder?

A. Yes, sir.

Q. State to the Court and jury what it is.

A. This is a folder that came from the navy yard at Bremerton, [584—532] contains a ship's requisition for the United States ship "Washington" number 47, dated January 21, 1908.

Q. When did you secure said folder?

A. About two weeks ago.

Q. From where did you secure it?

A. Navy Yard at Bremerton.

Q. It has been in your possession ever since you secured it from the navy yard at Bremerton?

A. Until this afternoon.

Q. And this afternoon you delivered it to Mr. Meyer? A. Yes, sir.

Q. Is it now in the same condition that it was at the time you received it from the navy yard at Bremerton? A. Apparently so.

(Testimony of Hiram S. House.)

Q. And in the same condition it was when you delivered it to Mr. Meyer?     A. Apparently so.

Mr. MORRIS.—We offer this folder for identification, your Honor.

(Folder referred to marked Defendants' Identification "W.")

Q. Mr. House, I again direct your attention to a card attached to four sheets of paper (handing same to witness). Kindly examine said card and state to the Court and jury what it is, if you know.

A. This is a ship's requisition made by the United States ship "Colorado"—

Q. Are you referring to the sheets of paper or the card?

A. Which do you want me to refer to? I was referring to the whole requisition.

Q. Directing your attention especially to the card. Read my question. (Question repeated.) The card, now, is the particular [585—533] subject.

A. All I know about these cards is just what I have been told.

Q. Well, tell the jury what it is, then. Get it that way.

A. The card attached is a card that is made out in the general storekeeper's office when a ship's requisition is received, and it shows the—

Q. Let me ask you a question right here. That is, you mean that that card is received, that is the ship's requisition for supplies, and then this card starts in to perform its duty?     A. Yes, sir.

Q. The requisition first must originate, though,

(Testimony of Hiram S. House.)

with the ship? A. Yes, sir.

Q. All right, go on.

A. And this card, the way I understand it, shows the date on which the material requisitioned for is delivered.

Q. Has that card a number? A. Yes, sir.

Q. What is the number?

A. It is the record order number 694.

Q. Record order 694. Any other number?

A. Yes, sir.

Q. Give the other number.

A. It says "U. S. S. Colorado No. 30."

Q. All right, proceed. Anything else on the card?

A. Want me to read the entire card?

Q. No. That is all?

A. That is all the numbers.

Q. Now, directing your attention to the four sheets of paper attached to said card, kindly state what those are.

A. The first sheet is a ship's requisition from the U. S. ship "Colorado" No. 30, dated April 24th, 1908.

Q. Are the succeeding sheets attached to the card and the first sheet [586—534] part of the first sheet? A. They are fastened together.

Q. Yes. I say, they all relate to the same transaction?

A. The second and third sheets are what are known as store invoices.

Q. But they are relating to the subject matter, the requisition? A. Yes, sir.

Q. This card being part of this transaction, may it



(Testimony of Hiram S. House.)

please your Honor, I suppose it will be the pleasure of the Court to have it identified as one exhibit?

The COURT.—I think it would be better to have it identified together.

Mr. MORRIS.—Just whatever the Court suggests. You see, it is fastened together (showing).

The COURT.—This card might be “X” and the other “XX.”

Mr. MORRIS.—All right. At the Court’s suggestion, the card will be identified “X,” and the four sheets to which said card is attached to be identified as “XX.”

(Papers referred to marked defendants’ “X” and “XX” for identification, respectively.)

Q. Mr. House, I again direct your attention to a card attached to two small sheets and four larger sheets of paper (handing same to witness). Kindly examine those papers and state to the Court and jury what the card is, if you know, giving its number and any other description matter contained thereon.

A. This is a card that was attached at the navy yard to—

Q. Better give the number of the card, probably, first? A. It is store order number 685.

Q. Any other number?

A. It is attached to requisition U. S. ship “St. Louis” No. 60.

Q. Does the requisition to which said card is attached bear a number? [587—535] A. Yes, sir.

Q. Kindly state the number to the Court and jury.

A. This is ship’s requisition No. 60 for the U. S.

(Testimony of Hiram S. House.)

ship "St. Louis," dated April 27, 1908.

Q. Mr. House, from where did you secure said papers? A. Navy Yard at Bremerton.

Q. When? A. About two weeks ago.

Q. They have been in your possession ever since?

A. Until to-day, yes, sir.

Q. Are they now in the same condition they were at the time you received them from the Puget Sound Navy Yard? A. Apparently.

Q. Sir? A. Apparently so, yes, sir.

Mr. MORRIS.—We would like to have said card and sheets of paper identified.

(Papers referred to marked defendants' identification "Y.")

Q. (Mr. HOUSE.) I again direct your attention to numerous papers to which are attached two cards (handing same to witness.) I wish you would examine the first card and state to the jury what it is, if you can? A. This is store order Number 620.

The COURT.—Store order?

A. Yes, sir; it is record order, or store order.

The COURT.—620?

A. 620. It is attached to the ship's requisition No. 1 of the U. S. ship "Kearsarge," dated March 20th, 1908.

The COURT.—What date?

A. March 20th, 1908. [588—536]

Mr. MORRIS.—And those two cards and the papers attached thereto relate to the same subject matter, do they? A. Yes, sir.

Q. When did you secure said papers?

(Testimony of Hiram S. House.)

A. About two weeks ago.

Q. From where did you secure them?

A. Navy Yard of Bremerton.

Q. Is that previous to the beginning of this trial?

A. Yes.

Q. That you secured them? A. Yes, sir.

Q. They have been in your possession ever since, have they? A. Until to-day, yes, sir.

Q. And you delivered them to Mr. Meyer in the courtroom to-day? A. Yes, sir.

Q. At his request, I presume? A. Yes, sir.

Q. And are said papers in the same condition at the present time that they were in when you received them from the Puget Sound Navy Yard?

A. Apparently so.

Mr. MORRIS.—I would like to have these two cards and the papers attached thereto identified.

(Papers referred to marked defendants' identification "Z.")

Q. Mr. House, again directing your attention to a card and two sheets of paper (handing same to witness). Kindly examine the card and state to the Court and jury what the card is.

A. The card is record order No. 1019. It is attached to ship's requisition No. 9 of the U. S. ship "Kearsarge," dated June 8th, 1908. [589—537]

Q. And you secured said card and papers attached thereto from where? A. Navy yard, Bremerton.

Q. When? A. About two weeks ago.

Q. Previous to the beginning of this trial?

A. Yes, sir.



(Testimony of Hiram S. House.)

Q. And have they been in your possession ever since? A. Until to-day, yes, sir.

Q. You delivered them to Mr. Meyer at his request? A. Yes, sir.

Q. And they are now in the same condition that they were when you received them from the Puget Sound Navy Yard, are they?

A. Apparently so, yes, sir.

Mr. MORRIS.—We would like to have that identified.

(Papers referred to marked defendants' identification "A-1.")

Q. Mr. House, I again direct your attention to a card attached to which are several sheets of paper, small, larger and still larger (handing same to witness). Examine that card and state to the jury what it is.

A. This is store order No. 287 attached to ship's requisition No. 28 of the United States ship "Pennsylvania."

The COURT.—Number what?

A. No. 28 of the U. S. ship "Pennsylvania," dated February 26th, 1908.

Mr. MORRIS.—And from what source did you secure said papers?

A. From the navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Have they been in your possession ever since?

A. Yes, sir. [590—538]

Q. Did you deliver them to the defendant to-day?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. At his request?      A. Yes, sir.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton?      A. Apparently so, yes, sir.

Mr. MORRIS.—This will be defendants' "A-2," for identification.

(Papers referred to marked defendants' "A-2" for identification.)

The COURT.—How many papers are there, Mr. Morris? Are there a good many papers or files?

Mr. MORRIS.—No, we will finish by five o'clock, your Honor, with this. That is what I was trying to do, rush it through. Mr. Meyer, we have no others here now to be identified?

Mr. MEYER.—No, sir.

Mr. MORRIS.—Are there any papers which you now hold in your hand that have been in your possession less than two weeks, or that you secured subsequent to the beginning of this trial?

A. No, sir.

Mr. MORRIS.—Then we can stipulate at the present time that the record show that each and all of the papers which the witness now has in his hand to be identified has been in his possession and secured from the Navy Storekeeper's office at Bremerton, and they are in the same condition now as they were at the time you received them from the Storekeeper?

Mr. ALLEN.—So far as the knowledge of Mr. House goes, that is true.

Mr. MORRIS.—That is not the question. If you are going to stipulate let us stipulate.

(Testimony of Hiram S. House.)

The COURT.—Now, then, take these papers and identify them in the record. [591—539]

Mr. MORRIS.—Now, Mr. House, you will be compelled to take the first paper which you hold there, examine same, and see if it is in the same condition at the present time it was when you received it, from the Government, from the Storekeeper's office at the Puget Sound Navy Yard?

A. Is it in the same condition?

Mr. MORRIS.—It is in the same condition?

A. Apparently so, yes sir.

Mr. MORRIS.—And, as far as that department is concerned, we can enter into the stipulation that I just mentioned.

The COURT.—Now, so we can get it in the record, supposing the paper you have in your hand now will be known as exhibit "A-3," then there will be no question about it.

Mr. MORRIS.—All right.

A. "A-3." You want me to read the record number?

Q. You better give it to the Court.

A. Record No. 951. It is a U. S. "Rhode Island" requisition.

(Papers referred to marked defendants' identification "A-3.")

The COURT.—Now, the next one is "A-4," and hand it to him.

(Papers referred to marked defendants' identification "A-4.")

Mr. MORRIS.—Mr. House, directing your atten-



(Testimony of Hiram S. House.)

tion to Defendants' Exhibit "A-4" for identification, I want you to examine said card and the papers attached thereto, and state to the Court and jury when you received same (handing same to witness).

A. About two weeks ago.

Q. From where did you receive them?

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton? [592—540]

A. I believe they are, yes, sir.

Q. That is all right. Kindly state what is shown upon the face of said card as to number?

A. It is record order No. 134, the requisition of the U. S. ship "St. Louis."

Q. Requisition number and date?

A. No. 1, dated July 22d, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-5" for identification, same being a card to which are attached several sheets of paper (handing same to witness). Are you familiar with said card and papers thereto attached? A. Yes, sir.

Q. When did you secure said card and papers?

A. About two weeks ago.

Q. From where? A. Navy yard at Bremerton.

Q. Is that card and those papers in the same condition they were at the time you received them from the navy yard at Bremerton?

A. I believe them to be, yes, sir.

Q. Now, give the number on the card.

A. It is record order No. 29 attached to—requisi-

(Testimony of Hiram S. House.)

tion for the U. S. ship "Charleston," dated July 3d, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-6," for identification, same being a card attached to which are several sheets of paper (handing same to witness). Are you able to state from where you received such card and said papers?

A. Yes, sir.

Q. From where? A. Navy yard at Bremerton.

Q. When?

A. About two weeks ago. [593—541]

Q. Previous to the date of this trial?

A. Yes, sir.

Q. Is that card and those papers in the same condition at the present time they were at the time you received them from the navy yard?

A. I believe them to be, yes, sir.

Q. Directing your attention to said card, will you kindly give the Court and jury the number?

A. This is store order No. 544, attached to the requisition of the U. S. ship "California," dated April 16, 1908.

The COURT.—April 16, 1908? A. Yes, sir.

Mr. MORRIS.—Again directing your attention to Defendants' Exhibit "A-7" for identification same being a card attached to numerous sheets of paper (handing same to witness). Are you familiar with said papers? A. Yes, sir.

Q. When did you secure them?

A. About two weeks ago.

Q. From what source did they come?

(Testimony of Hiram S. House.)

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton? A. I believe them to be, yes, sir.

Q. Directing your attention to the card, kindly state the number thereon.

A. Record order No. 436, attached to requisition of the U. S. ship "Milwaukee," dated October 1st, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-8" for identification, same being a card and several sheets of paper attached, are you familiar with said papers? A. Yes, sir. [594—542]

Q. When did they first come into your possession?

A. About two weeks ago.

Q. From what source did you receive them?

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when they were received by you from the navy yard at Bremerton? A. I think they are.

Q. Kindly state the card number.

A. Record order No. 1094.

Q. Any other designation?

A. Attached to requisition of the U. S. ship "Tennessee," dated May 26th, 1908.

Q. Again calling your attention to card and sheets of paper attached thereto (handing same to witness).

The COURT.—For the record, that is "A-9."

A. "A-9," yes, sir.

Mr. MORRIS.—Are you familiar with said papers, defendants' identification "A-9"?

A. Yes, sir.



(Testimony of Hiram S. House.)

Q. Are you familiar with said papers?

A. Yes, sir.

Q. Where did you secure them?

A. Navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Are they now in the same condition as when you received them from the navy yard?

A. I believe them to be. [595—543]

Q. State the number on said card, will you, please?

A. Record order 966.

Q. Record 966?

A. Attached to the requisition of the ship "New Jersey."

Q. Number of requisition?

A. Dated March 9, 1908. That what you want?

Q. Yes, sir. Again directing your attention to Defendants' Exhibit "A-10" for identification (handing same to witness), kindly examine that bunch of papers. Are you familiar with them?

A. Yes, sir.

Q. From where did you receive them?

A. Navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Two weeks ago? A. Yes, sir.

Q. Are they now in the same condition as they were when you received them from the navy yard at Bremerton? A. I believe they are.

Q. State to the Court and jury what that identified exhibit shows.

A. This is requisition number 8 of the U. S. ship "St. Louis," dated September 22d, 1908.

(Testimony of Hiram S. House.)

Q. These papers relate only to the requisition for the "St. Louis"?      A. Yes, sir.

Q. I again direct your attention to Defendants' Exhibit "A-11" for identification (handing same to witness), same being a card attached to one sheet of paper. Are you familiar with said exhibit?

A. Yes, sir.

Q. When did it come into your possession?

A. About two weeks ago. [596—544]

Q. Is it now in the same condition it was at the time you received it two weeks ago?

A. I believe it is.

Q. From what source did you receive same?

A. Navy yard at Bremerton.

Q. State the number on said card, will you please?

A. It is record order No. 1022. It is attached to requisition from the ship U. S. "New Jersey."

Q. And the number of the requisition?

A. Requisition No. 41, dated June 8th, 1908.

Q. And again directing your attention to Defendants' Exhibit "A-12" for identification, one sheet of paper (handing same to witness). Examine same. Are you able to state to the jury from what source you received said paper?      A. Yes, sir.

Q. From where?      A. Navy yard at Bremerton.

Q. When?      A. In April or May of 1911.

Q. It has been in your possession ever since?

A. Yes.

Q. It is now in the same condition it was when you received it from the navy yard in May, 1911?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Has it been in your possession all of said time since you received it from the navy yard?

A. It has been in the safe of the United States Attorney for a while.

Q. And it was taken out of the safe of the United States District Attorney at whose request?

A. I took it out at my own request. Mr. Meyer asked me to bring [597—545] it here.

Q. Mr. Meyer asked you to bring it into court?

A. Yes, sir.

Q. And you got it from the District Attorney's safe? A. Yes, sir.

Q. And it is now in the same condition it was when you delivered it to Mr. Meyer? A. Yes, sir.

The COURT.—What do you call that sheet?

A. That is a stock ledger sheet for boiler zinc.

Mr. MORRIS.—I think that is all we will try to do to-night, Mr. Schlesinger, if you have no objection.

Mr. SCHLESINGER.—Not at all, Mr. Morris.  
[598—546]

## TUESDAY AFTERNOON SESSION.

November 4th, 1913, 2 o'clock P. M.

Mr. MORRIS.—At this time, your Honor, I would like the indulgence of Court and counsel for the Government. We have taken what we consider the precaution in procuring the attendance of three witnesses for the defendant Meyer at this time, and while Mr. Meyer's defense is not going to be introduced first, we would like at this time, if the Court would consent, a lady and two gentlemen, a lady



(Testimony of W. Walls.)

from Bremerton and two business men in the city, their evidence to be taken in behalf of defendant Meyer at this time. You have no objection to that, have you, Mr. Allen?

Mr. ALLEN.—I can't think of any possible objection, your Honor.

The COURT.—Very well.

**[Testimony of W. Walls, for Defendant.]**

W. WALLS, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My full name is William Walls. I have lived in Seattle since 1905. I am a ship carpenter. I am acquainted with the defendant Meyer. I have known him for seven years. I was acquainted with him during the year 1907. I occupied the property of Mr. Meyer. The first of October I rented a house of Mr. Meyer. I lived in it for two years. It is at 107 21st Avenue North. I paid the rent to Mr. Meyer himself. I moved into the house on the first of October, 1907, and remained until October, [599—547] 1909. I have my receipts.

Q. Will you kindly produce same?

A. Sure thing. (Witness produces same.) Those are the rent receipts I paid Mr. Meyer during that period. I identify them all. I hold in my possession receipts for the rent of the house which I rented from Mr. Meyer from the first of October,

(Testimony of W. Walls.)

1907, to June, 1908. Those six receipts were given to me by the defendant, Meyer, at the time I made my monthly payments. I rented the house the first of October, 1907, and Mr. Meyer has not been in there only just once a month for rent—that is all. At the time I rented the house from Mr. Meyer he had moved out a week before that.

The COURT.—Do you want to identify those receipts?

Mr. MORRIS.—I would offer them in evidence, but I understand the District Attorney makes no contest of it.

The COURT.—Stand aside.

Mr. ALLEN.—That is all. [600—548]

**[Testimony of L. A. Cook, for Defendants.]**

L. A. COOK, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My name is L. A. Cook. I live at the present time in Bremerton, Washington, and have lived there off and on for the last eleven years. I am a stenographer at present in the Puget Sound Navy Yard, and have been employed there about eight years altogether. I have been connected with the Storekeeper's department of the Puget Sound Navy Yard and was connected part of the time in said department at the time the defendant Meyer was connected with the Storekeeper's Department of said navy yard. Mr. Meyer was Chief Clerk at that

(Testimony of L. A. Cook.)

time, and I was Public Bill Clerk, I think. I was a subordinate clerk under this man.

Q. And that relationship existed between you and the defendant Meyer for how long at the Puget Sound Navy Yard?

A. Well, I think he was Chief Clerk there for—I think I served under him for a year or a year and a half.

Q. During the years of 1907 and 1908 did you own any real property in Bremerton?

A. I did, yes, sir, 248 Sixth Street, Bremerton.

Q. What was the number of the house?

A. 248.

Q. 248 Sixth Street. At the time you owned this property were you acquainted with the neighbors, your immediate neighbors to either side of the property?

A. I was, yes, sir.

Q. Did you know at that time a lady by the name of Mrs. Florence Green? [601—549]

A. Mrs. Flora Green?

Q. Mrs. Flora Green.

A. Yes, sir, that is the name.

Q. Was she a neighbor of yours?

A. Yes, sir, the next door.

Q. Her house was in the next yard to yours?

A. Yes, sir.

Q. Directing your attention especially to the months of October, November and December, and subsequent months, or October, November and December of 1907, did you occupy your house?

A. No, sir.



(Testimony of L. A. Cook.)

Q. Or was that house rented to some one?

A. It was rented to Mr. Meyer.

Q. To Mr. Meyer? A. Yes, sir.

Q. When you speak of Meyer you mean E. F. Meyer, the defendant in this action? A. I do.

Q. State to this jury when Mr. Meyer rented the property in question from you.

A. It was along in September that I found I was going east, and I wanted to rent my house, and Mr. Meyer offered to rent it from me, and he did rent it, paying rent from October the 1st, 1907.

Q. Until what time?

A. Well, either the first of March or the first of April, 1908. I am not sure whether it was the first of March or the first of April.

Q. And during the time that Mr. Meyer was occupying the premises in question were you in Bremerton, or had you left Bremerton?

A. I had left Bremerton.

Q. And did you receive from Mr. Meyer any remittance in payment of [602—550] rent?

A. I did, every month.

Mr. ALLEN.—We will admit he paid his rent. There is no question about that.

Mr. MORRIS.—We will save time by proving it.

Q. And when you rented the property to Mr. Meyer was it furnished or unfurnished?

A. It was furnished.

Mr. MORRIS.—That is all. [603—551]

**[Testimony of Mrs. Flora Green, for Defendants.]**

Mrs. FLORA GREEN, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My name is Mrs. Flora Green, and I reside at the present time at 252 Sixth Street, Bremerton. It is next door to Mr. Cook's property, the gentleman who was just here on the witness-stand, and I have lived there since 1902. I have a speaking acquaintance with Mr. and Mrs. Meyer. I became acquainted with them in the fall of 1907. They moved into Mr. Cook's house in the fall of 1907. I became acquainted somewhat with Mrs. Meyer. She was sick that winter, and I used to run in occasionally. She was sick in mid-winter, I think in December. She gave birth to her son. At the time Mr. and Mrs. Meyer moved into Mr. Cook's property they had a little girl, I think.

On cross-examination by Mr. ALLEN, the witness testified as follows:

I don't know the day when this baby was born. I was not in the house. He was born some time in December, 1907.

On redirect examination the said witness testified as follows:

I called upon Mrs. Meyer several times after the birth of this child.

Mr. SHIPLEY.—If the Court please, there are a number of exhibits that were introduced as defend-

(Testimony of Hiram S. House.)

ants' exhibits in the former trial, 2,042, which we would like an order for withdrawal of, and we will have an order prepared and kept by the clerk. [604—552]

The COURT.—You may withdraw them. Have you prepared an order?

Mr. SHIPLEY.—No, I haven't prepared an order.

The COURT.—Have you checked them up, Mr. Clerk?

The CLERK.—No, I haven't.

Mr. SHIPLEY.—Mr. House went over them with us this morning, and they are all Government files, your Honor, and they will be returned into the custody of Mr. House.

**[Testimony of Hiram S. House, for Defendants  
(Recalled).]**

HIRAM S. HOUSE, recalled on behalf of the defendants, for continued direct examination.

(By Mr. SHIPLEY.)

Q. Mr. House, handing you a Government folder bearing the letter "O" on the back, which was an exhibit in the former trial, I will ask you to state what that is, please.

A. This is the yard folder for requisition No. 490, series of 1908, the requisition being for lead and ochre and venetian red.

Mr. ALLEN.—Mr. Shipley, might I ask you how many of those you want to identify?

Mr. SHIPLEY.—I think there is about a half dozen, just the bunch that Mr. Morris has in his hand.

Q. This is one of the files that has remained in



(Testimony of Hiram S. House.)

the custody of the clerk since the former trial?

A. Yes, sir.

Mr. SHIPLEY.—We would ask to have this marked for identification, if the Court please.

(Folder referred to marked Defendants' Exhibit "A-13" for identification.)

Q. Mr. House, I hand you a folder bearing the mark, the letter "M," [605—553] as an exhibit on the former trial, and ask you to identify that.

A. This is a yard folder for requisition number 426, dated March the 30th, 1908, asking for the purchase of venetian red, sugar of lead, and vermilion.

Mr. SHIPLEY.—We would ask to have that identified as an exhibit in this case.

(Papers referred to marked Defendants' Exhibit "A-14" for identification.)

Q. Handing you a folder stamped with the letter "L" on the back of it, I will ask you what that is?

A. This is a yard folder for requisition No. 400, series of 1908, dated March 17, 1908, asking for the purchase of 4,000 packages of toilet paper.

Q. That is one of the exhibits that has been in the custody of the clerk since the former trial?

A. Yes, sir.

Mr. SHIPLEY.—We would like to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-15" for identification.)

Q. Handing the witness another folder marked Defendants' Exhibit "J," I will ask you, please, to identify that.

(Testimony of Hiram S. House.)

A. This is a yard folder for requisition number 335, series of 1908, dated February 25th, 1908, asking for the purchase of turpentine, and bolts and nuts.

Q. That is also one of the exhibits that has been in the clerk's office, is it not, Mr. House?

A. Yes, sir.

Mr. SHIPLEY.—I will offer that for identification.

(Folder referred to marked Defendants' Exhibit "A-16" for identification.)

Q. Handing the witness a folder marked Defendants' Exhibit "K," I [606—554] would like you to state, Mr. House, what that folder is, the folder and its contents.

A. This is yard folder number 391, series of 1908, dated March 16th, 1908, asking for the purchase of turpentine.

Mr. SHIPLEY.—We would ask that be marked for identification.

(Folder referred to marked Defendants' Exhibit "A-17" for identification.)

Q. Handing the witness folder marked Defendants' Exhibit "I," I believe that is all, kindly state what that is, Mr. House.

A. This is yard folder number 315, series 1908, dated February 12th, 1908, asking for the purchase of 3,000 packages of toilet paper.

Mr. SHIPLEY.—We would ask this be marked for identification.

(Folder referred to marked Defendants' Exhibit "A-18" for identification.)

(Testimony of Hiram S. House.)

Q. Mr. House, handing you a package of documents or letters marked Defendants' Exhibit "R," I will ask you, if you can, to state to the jury whether or not that is one of the exhibits that has been with these other papers identified as exhibits that were offered in the other trial. You have examined these exhibits in the clerk's office before going on the stand, have you not?

A. Well, I have forgotten where these things come from. This was an exhibit in the other case.

Q. Well, they were among this package of papers, were they not? A. Yes.

Q. That were examined in the clerk's office this forenoon?

A. Yes. Yes, this was an exhibit in the former trial.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Papers referred to marked Defendants' Exhibit "A-19" for identification.)

Q. Mr. House, showing you a letter or paper, copy of a letter marked [607—555] Defendants' Exhibit "W," I will ask if you can state that that was one of the papers that was included in this bundle of exhibits in the clerk's office which we examined?

A. Yes, sir, it is.

Mr. SHIPLEY.—We would ask to have this marked for identification.

Mr. ALLEN.—What is it?

Mr. SHIPLEY.—It is one of the exhibits on file, a copy of a letter signed "E. B. Rogers, Paymaster



(Testimony of Hiram S. House.)

General, U. S. Navy," dated January 2d, 1909.

(Papers referred to marked Defendants' Exhibit "A-20" for identification.)

Q. Mr. House, were there some more folders that were brought in that Mr. Meyer referred to this morning? Mr. House, handing you a package of papers attached with ship's requisition for U. S. ship "California," I would ask you to examine that and state, if you can, what it is and where it came from?

A. This is ship's requisition No. 14 of the U. S. ship "California," dated November 22d, 1907, for various items.

Q. When did that come into your custody, Mr. House, please? A. This morning.

Q. And from where?

A. Came through the mail from the navy yard at Bremerton.

Q. It is one of the records of the General Storekeeper's office at Bremerton.

A. I never saw it over there, I am sure it is, though.

Q. That is where you obtained it from?

A. Yes, sir; I telephoned Mr. Barnes for it.

Q. And Mr. Barnes is the Chief Clerk?

A. Yes, sir.

Mr. SHIPLEY.—We will ask to have this marked for identification. [608—556]

(Papers referred to marked Defendants' Exhibit "A-21" for identification.)

Q. Mr. House, will you kindly examine this folder and state what it is?

(Testimony of Hiram S. House.)

A. This is record order number 244 of the files of the Navy Yard at Bremerton, contains ship's requisition number 6 from the U. S. ship "Buffalo," dated December 14, 1907.

Mr. SHIPLEY.—We would ask to have that marked for identification, if the Court please.

(Folder referred to marked Defendants' Exhibit "A-22" for identification.)

Q. Mr. House, I hand you a folder and ask you to examine it and state what it is.

A. This is a yard folder for contract number 12,816, contract with the Central Metal & Supply Company, dated March 7, 1910.

Q. You received this, and the last preceding folder just previously marked, when?

A. Well, I got the last one this morning and I got this one perhaps two weeks ago.

Q. Well, they came from the general Storekeeper's office, Bremerton Navy Yard?

A. That is where I sent for them, yes, sir.

The COURT.—What contract is that?

A. 12,816.

Mr. SHIPLEY.—You have had this in your custody for two weeks, about?      A. Yes, sir.

Q. Same condition in which you received it?

A. I guess so; yes, sir.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-23" for identification.) [609—557]

Q. Mr. House, handing you another folder, state,

(Testimony of Hiram S. House.)

please, what that is and when you received it.

A. This is the Navy Pay Office folder for requisition number 170-L, series of 1910. It is dated February 25th, 1910, and calls for several different items.

Q. Items from the Navy Pay Office in Seattle?

A. Yes, sir.

Q. And when did you receive it, please?

A. Why, I have had this for quite a while.

Q. About how long?

A. Oh, perhaps a couple of years.

Q. Since sometime in the spring of 1911?

A. I believe so, yes, sir.

Q. And it has been in your custody with the other Government folders that you have testified to previously? A. Yes, sir.

Q. This folder is in the same condition that it was practically, so far as the contents of the papers are concerned? A. Yes, sir, I believe so.

Mr. SHIPLEY.—We would ask to have it marked for identification, please.

(Folder referred to marked Defendants' Exhibit "A-24" for identification.)

Q. Mr. House, kindly examine this folder and state what it is and when you received it.

A. This is the yard folder for requisition number 170-L, series of 1910, containing a requisition dated February 25th, 1910. This is a yard folder for the one that was identified just a minute before.

Q. And you received that when? [610—558]



(Testimony of Hiram S. House.)

A. About the same time as the other one, about two years ago.

Q. It is still in the same condition it was originally when you received it?      A. Apparently so, yes, sir.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-25" for identification.)

Mr. SHIPLEY.—I think that is all at the present time. [611—559]

**[Testimony of E. S. Fowler, for Defendants.]**

E. S. FOWLER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

My full name is E. S. Fowler. I live in Oakland, California. I have been in Seattle once before; that was two years ago.

Q. What was the occasion of your being here two years ago?

A. I was before the Grand Jury. I was here in this courtroom yesterday afternoon. I expected to be called at two o'clock. I was called before the Federal Grand Jury on behalf of the Government, and have been subpoenaed to attend in this particular matter. I testified before the Federal Grand Jury at that time. I am here at the request of Mr. Goldberg. He telegraphed me to attend. I have heard of a concern called the Fowler Metal Com-

(Testimony of E. S. Fowler.)

pany. Between September 26th, 1907, and March 16th, 1909, said concern has transacted business between those dates in San Francisco. It dealt in new and old metals. Its place of business was at 624 Brannan Street, San Francisco, California.

Q. I will call your attention to a number of checks bearing the caption "Fowler Metal Company, 824-26-28, Brannan Street," and I will ask you whether or not you recognize these checks as the checks used in the ordinary course of business by that concern?

A. Yes, sir.

Mr. SCHLESINGER.—We will, if your Honor please, offer these checks in evidence, so much thereof as refer to the Fowler Metal Company, between the dates I have indicated. Of course, the other part of the transactions have nothing to do with any of these issues.

The COURT.—The checks will be marked for identification "A-26." [612—560]

Mr. ALLEN.—Your Honor, there is only about two-thirds of them that seems to be checks without any possible connection to any facts of any kind bearing upon this particular case. Checks drawn under the name of E. S. Fowler, printed "Fowler Metal Company," and payable to all kinds of people, and in every instance nearly they are after every material fact in this case in point of time.

Mr. SCHLESINGER.—Well, if that be your objection we will offer the check of January 5, 1908, No. 244; we will offer the check of May 26th, 1908, No. 561; we will offer the check dated May 27, 1908,

(Testimony of E. S. Fowler.)

No. 565; we will offer the check No. 566, and bearing date May 27, 1908; we will offer check No. 284, bearing date January 27, 1908; we—

The COURT.—I think they can be admitted. It is for the purpose, I take it, of corroborating the statement of this witness it is a going concern?

Mr. SCHLESINGER.—That is all, your Honor, and for that purpose only. Gentlemen, I will ask you to look at the caption of these checks and not the body (exhibiting checks to witness).

Mr. SCHLESINGER.—Mr. Fowler, do you know a gentleman, likewise an existent person, named A. Alper? A. I do.

Q. And did this concern have anything to do with the Great Western Smelting & Refining Company?

A. You mean the Fowler Metal Company?

Q. Yes. A. Yes, sir, it did.

Q. Were you transacting business with that concern, with the Great Western Smelting & Refining Company? A. Yes, sir. [613—561]

Q. And conferring with them from time to time as to business transactions? A. Yes, sir.

Mr. ALLEN.—Now, your Honor, I assume that is not proper cross-examination. Let this man state what was done.

The COURT.—Let the witness state what the facts are. Proceed.

Mr. SCHLESINGER.—Well, you said that you do know a Mr. A. Alper? A. Yes, sir.

Q. Directing your attention to a period of time, sometime in the year 1908, did you have any con-



(Testimony of E. S. Fowler.)

versation with Mr. Alper with respect to the use by him of the name Fowler Metal Company in any transactions in Seattle, yes or no?     A. I did.

Mr. ALLEN.—I object to that for the reason it is incompetent, immaterial and irrelevant, what conversation he may have had with any person connected with the Great Western Smelting & Refining Company, except this man Goldberg. This man Goldberg was the man who is transacting the business here in Seattle. If he had any conversation with him, or any direct authority under which Goldberg was acting, let him produce it here, but for him to come here and attempt to recite a conversation between Mr. Alper or any one of the million and a half people who live in the State of California, I submit it is impossible for the Government here, or any other time, to disprove any assertion he makes, and it is improper direct examination.

Mr. SCHLESINGER.—Why, you know what his evidence is, you had it before the Grand Jury; he is our witness.

Mr. RIDDELL.—No, we don't.

Mr. SCHLESINGER.—You had him before the Grand Jury; your indictment shows it.

The COURT.—I want you, gentlemen, to understand you are to conduct [614—562] yourselves as lawyers here, and if not I will punish you. It is not proper to make a statement of that kind. Now, this trial is going to be conducted orderly. Read the question. (Question repeated.) No, I think the objection should be sustained. You can direct

(Testimony of E. S. Fowler.)

his attention to whether he had any direct information to this order.

Mr. SCHLESINGER.—That is what I intend to lead up to.

The COURT.—Ask him whether he had.

Mr. SCHLESINGER.—Then the objection would have come as the question is leading.

The COURT.—The Court has ruled on that.

Mr. SCHLESINGER.—We take an exception, if the Court please.

The COURT.—Noted.

Mr. SCHLESINGER.—Mr. Fowler, I will ask you this question: In the year 1908, in the early part of that year, did you have any conversation with A. Alper of the Great Western Smelting & Refining Company as to your permitting the name of the Fowler Metal Company to be used with respect to any transaction in Seattle?

Mr. ALLEN.—Same objection, your Honor.

Mr. SCHLESINGER.—I might state to your Honor a word—I don't want to suggest to the witness an answer—that I intend to show a communicated authority. That certainly bears upon the question of intent, and that is the purpose of this question.

The COURT.—You mean Mr. Goldberg?

Mr. SCHLESINGER.—Absolutely. I shall show a prior conversation between Alper and Goldberg relating to this.

The COURT.—Let him answer the question.

(Testimony of E. S. Fowler.)

A. Mr. Alper—

Mr. ALLEN.—Your Honor, at this time— [615—563]

Mr. SCHLESINGER.—Now, if your Honor please, I certainly object, after the Court has ruled against the prosecution, for Mr. Allen to renew his objection. We don't do it and he ought not do it.

The COURT.—I don't know what he is going to do.

Mr. SCHLESINGER.—There is nothing pending before the court.

Mr. ALLEN.—This is, in substance, the same identical question that was asked before. There is nothing before the Court at this time which shows that Mr. Alper has any connection of any kind whatsoever with any concern in the world. You are merely relying upon a statement of counsel in regard to that. I don't know Mr. Alper.

Q. Now, Mr. Allen, counsel has stated the purpose to show this was a communication communicated to Mr. Goldberg, and the Court has ruled upon that, and after the Court has ruled upon the matter, the matter is disposed of; and the reason I sustained the objection on the former question was because it was simply a question that might end anywhere, but if this is authority they expect to connect with Mr. Goldberg, it is admissible.

Mr. SCHLESINGER.—Read the question.

Q. (Question repeated.) Your answer was?

A. Yes.

Q. Will you state just as tersely and as briefly as



(Testimony of E. S. Fowler.)

you can what that conversation was?

A. Mr. Alper came to my office and, after some conversation in regard to matters connected with the business, said that he might use my name in connection with some bid, with the signing of a bid or check, I don't recall which, or whether it was both, and I replied, "Certainly, Chief, any way you wish to use it you are at perfect liberty." That is all.

Q. Did he ask you at that time whether you could permit that name to be used in that way? [616—564] A. Yes, sir.

The COURT.—Now, my purpose wasn't to permit this conversation between Mr. Alper and this defendant. That question already has been answered as to the authority to communicate to Mr. Goldberg.

Mr. SCHLESINGER.—To what matter did Mr. Alper in that conversation refer?

A. Well, I didn't know at the time what it would be, but I know now it was this matter of the stuff that was sold to the Government.

Q. Talk louder, please. A. It refers to this—

Mr. ALLEN.—Just a moment. I object to that unless the witness, your Honor, can state of his own knowledge.

The COURT.—I think that is right.

Mr. SCHLESINGER.—That is proper. You understand, Mr. Fowler, there are certain technical rules of law we all have to observe, and so please bear in mind and simply state what you know of your own knowledge, so far as you can recollect.

A. You mean since that time?

(Testimony of E. S. Fowler.)

Q. This occurred five years ago, I understand. What else did he say to you, if anything, upon that subject? A. Nothing further than that.

Q. Were you under a salary at that time with the Great Western Smelting & Refining Company?

A. Yes, sir.

Q. And after you had given authority to Mr. Alper, as you have testified, the conversation ended?

A. Yes, sir.

Q. By the way, have you been subpoenaed by the Government to attend [617—565] this trial since your appearance before the Grand Jury?

A. No, sir.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Fowler, this conversation which you just testified to between yourself and Alper was a query directed to you about five years ago, was it not?

A. No, it was 1908,—yes, that would be about five years ago.

Q. About five years ago? A. Yes, sir.

Q. This matter of the existence of the Fowler Metal Company with reference to any business transacted in Seattle was next called to your attention by some emissary of the United States Government along in the year 1910, was it not, Mr. Fowler?

Mr. SCHLESINGER.—I object to that upon the ground the name of emissary is not stated, nor is a sufficiently definite time stated.

(Testimony of E. S. Fowler.)

The COURT.—Let him answer.

Mr. SCHLESINGER.—Take an exception.

The COURT.—Noted.

Mr. ALLEN.—Read the question.

(Question repeated.)

A. Oh, I think there was something said about it; I don't just recall.

Q. Well, so as to get it definitely before your mind, do you recall an instance of some man coming to see you in the month of May, 1911, with reference to the Fowler Metal Company and any business connections it might have in the city of Seattle?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination and not having been inquired into by the witness on direct. [618—566]

The COURT.—Overruled. Answer the question.

Mr. SCHLESINGER.—Exception.

The COURT.—Noted.

Mr. ALLEN.—You understand the question, Mr. Fowler? A. Yes, shall I answer the question?

Q. Yes. A. No, I didn't understand it.

(Question repeated.)

A. I was called upon several times by representatives of the Government. I don't recall just exactly—

Mr. ALLEN.—You were called upon several times by representatives of the Government, is that true, Mr. Fowler? A. Yes, sir.

Mr. SCHLESINGER.—Object upon the ground the question has been asked and answered.



(Testimony of E. S. Fowler.)

The COURT.—Proceed. Exception.

Mr. ALLEN.—Directing your attention now to a particular time and date, do you recall a visit of a man by the name of Bryan to your office on the 11th day of May, 1911, with reference to this particular Fowler Metal Company and any business it may have transacted in the city of Seattle?

Mr. SCHLESINGER.—Was that before he was subpoenaed to the Grand Jury?

Mr. ALLEN.—Yes, as a matter of fact, it was.

Mr. SCHLESINGER.—I have no objection to that.

A. I don't recall the names of any of those men.

Mr. ALLEN.—Do you recall a tall man with a mustache? A. Yes.

Q. A man probably as tall as I am? [619—567]

A. Yes, he was the first man to call on me.

Q. He was the first man to call on you?

A. Yes, I recall him.

Q. And at that time he directed to you certain inquiries about the Fowler Metal Company and any business connection it might have in the city of Seattle, did he not? A. Yes, sir.

Q. At that time I believe you were engaged in the real estate business? A. Yes, sir.

Q. And, in a way, you were handling some of Mr. Alper's business at that time, weren't you?

A. No, sir.

Q. You were not? A. No, sir.

Q. Didn't you so state to him, as a matter of fact?

(Testimony of E. S. Fowler.)

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, no inquiry having been made on direct.

The COURT.—Proceed. Exception.

Mr. ALLEN.—Did you or did you not, on the 11th day of May, 1911, in the city of San Francisco, in answer to a query propounded to you by this man Bryan, who came to see you in your own office, or elsewhere, in the city of San Francisco, and there asked you whether or not there was any possible connection between the Fowler Metal Company, with which you had been connected, and the Great Western Smelting & Refining Company, and you at that time answered that there was not and never had been?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

Mr. ALLEN.—Or that in substance. [620—568]

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, not inquired of on matters in chief, and what he said would be absolutely immaterial.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) San Francisco or Oakland?  
A. Yes, Mr. Bryan—

Mr. SCHLESINGER.—Now, if your Honor please,—

(Testimony of E. S. Fowler.)

Mr. ALLEN.—Answer the question, did you or did you not?

Mr. SCHLESINGER.—One moment. In defiance of the Court's ruling you have in this courtroom now a detective, so-called. We ask he not be in this courtroom.

Mr. ALLEN.—Mr. Bryan, stand up. (Mr. Bryan thereupon arose.) You recognize this as the man who came to see you? A. Yes, sir.

Q. All right. That is all, Mr. Bryan. (Mr. Bryan leaves the courtroom.) Now, you can answer the question. A. Yes, Mr. Bryan came to see me.

Mr. SCHLESINGER.—A little louder, Mr. Fowler.

A. Mr. Bryan came to see me and asked me if I was connected, or had been connected, with the Great Western Smelting & Refining Company as the Fowler Metal Company? I replied no.

Mr. ALLEN.—I didn't get the first part of that answer.

Mr. SCHLESINGER.—I move to strike out the answer of the witness as not being responsive. Mr. Bryan was asking him as to his connection on the very date of his visit. His evidence referred to 1908. Of course he wasn't connected in business in 1911 or 1910. [621—569]

Mr. ALLEN.—My question was "or had been" and he answered no.

Mr. ALLEN.—You may answer now that on that occasion you told Mr. Bryan that there was no connection, is that true? A. Yes, sir.



(Testimony of E. S. Fowler.)

Q. After that time, then, after that time you came to the city of Seattle, did you not, and appeared before the Grand Jury here?     A. Yes, sir.

Q. You met a lawyer by the name of Hutson in this city, didn't you, on that occasion?

A. Yes, sir.

Q. You had several conversations with Mr. Hutson, didn't you?     A. Yes, sir.

Q. Also again with Mr. Bryan here in the city?

A. Yes, sir.

Q. And that was about the 26th or 27th of May, 1911, wasn't that true?

A. I don't recall the dates, but I was here.

Q. But that was approximately true?

A. I should judge so.

Q. And after you appeared before the Grand Jury you went into Mr. Hutson's room, the District Attorney's office?

Mr. SCHLESINGER.—I object as not being proper cross-examination. I haven't asked him a word about any conversation with Mr. Hutson in 1911, or any other time; and not proper cross-examination.

The COURT.—If this is to develop conversations with Mr. Hutson, of course it would not be proper, unless it goes back to this conversation, as is contended, which was communicated to Mr. Goldberg.

Mr. ALLEN.—Yes, sir, your Honor. [622—570]

The COURT.—Proceed. If it goes to that it is proper. Exception.

Mr. ALLEN.—Well, this was the question:

(Testimony of E. S. Fowler.)

Q. After you had appeared before the Grand Jury did you or did you not state, in the presence of Mr. Hutson, and Mr. Bryan, that you had lied to Mr. Bryan down in San Francisco, changed your position in the matter, isn't that true, or words to that effect?

A. Well, I didn't say I lied to him, no.

Q. Well, you used a word equivalent to that, didn't you?

Mr. SCHLESINGER.—I object to that as being improper cross-examination.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—I want to show he made statements out of court contrary to what he made in court. Read the question. (Question repeated.) What was your answer?

A. I can explain that.

Mr. SCHLESINGER.—Yes, he is entitled to explain.

Mr. ALLEN.—If you didn't use the word "lied," did you use a word equivalent to that in the ordinary acceptance of the English language?

Mr. SCHLESINGER.—That is not proper cross-examination and they ought to treat their own witness with more respect, your Honor please.

The COURT.—Let him answer the question.

Mr. SCHLESINGER.—Exception. He has given an answer. He has now asked the privileges of explaining. May he not do so.

The COURT.—I think he said, "I can explain it," but he hasn't done so. Let him answer and then he can explain.

(Testimony of E. S. Fowler.)

A. Yes, I acknowledged to that, that I had misrepresented.

The COURT.—Now, make any explanation that you desire to make. [623—571]

A. When Mr. Bryan came into my office, as I stated, I was busy—

Mr. SCHLESINGER.—Talk louder, please, Mr. Fowler.

A. (Continuing.) —and when I was at leisure he pulled a card out of his pocket and stated—asked me if I had ever been connected with the Great Western Smelting & Refining Company as the Fowler Metal Company. Now, people were coming in constantly and pulling out their cards. I didn't notice it was a Government officer, or pay any attention to it, and I denied the fact that the Fowler Metal Company had ever been connected with the Great Western Smelting & Refining Company. And during the time that I was the manager of that concern it was never known generally that the Fowler Metal Company was identified with the Great Western Smelting & Refining Company, and I didn't reveal it then. However, when I came to Seattle and discovered that I was up before the Government, or rather had been notified by the Government to appear, I realized that I had made a mistake in that statement and it would have to be explained, which I did immediately.

Mr. SCHLESINGER.—What did you explain?

Mr. ALLEN.—Just a moment, now.

Mr. SCHLESINGER.—You said that was all.

Mr. ALLEN.—He explained now. Now, I have a



(Testimony of E. S. Fowler.)

right to cross-examine him further.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—That is all.

On redirect examination by Mr. SCHLESINGER the witness testified as follows:

Q. Now, Mr. Fowler, did you, as a matter of fact, go before the Federal Grand Jury and tell them that there was such a concern as the Fowler Metal Company, that you were at the head of that [624—572] concern, that you did give authority for this transaction?      A. I did.

Q. You did. And, as a matter of fact, the Fowler Metal Company was not in existence at the time of Mr. Bryan's visit to you, was it?      A. No.

Mr. SCHLESINGER.—That is all.

On recross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Fowler, the conversation, then, with Mr. Bryan took place on March 11, 1911, May 11, 1911?

A. I don't recall the date.

Mr. SCHLESINGER.—That is all, Mr. Fowler. [625—573]

**[Testimony of Emar Goldberg, in His Own Behalf.]**

EMAR GOLDBERG, produced as a witness on his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

My full name is Emar Goldberg. I was born in the city of Chicago. I was thirty-eight years of age

(Testimony of Emar Goldberg.)

the 18th of last June. I arrived in California when I was about one year old. I attended the public schools in San Francisco and Stockton, California. I attended the State University and spent two and one-half years at the University of California. I moved to the city of Seattle in the early part of 1902. I am a married man and am living in Seattle with my family, and have ever since my arrival here. I have never before been arrested or accused of any crime either against the laws of any State or against the laws of Federal Government. I first entered the employ of the Great Western Smelting & Refining Company about the first of April, 1898, in the capacity of stenographer and bookkeeper and was employed at San Francisco. On arriving in the city of Seattle, I engaged in the metal business with the Great Western Smelting & Refining Company. It is incorporated under the laws of the State of Maine. It has about fourteen or fifteen branches. I became manager or agent of the Seattle branch in 1903. I received at that time a salary of \$175 per month. I was not then, nor have I ever been, a member of the Board of Directors of that concern or any subsidiary corporation of that concern.

Q. Are you or have you ever been an officer?

A. No, sir.

Q. Are you ever consulted with respect to the *eternal* management of [626—574] the parent corporation?

A. No, sir.

Q. Who is and was the vice-president of the Pacific Coast branches of that concern?

(Testimony of Emar Goldberg.)

A. Mr. A. Alper.

Q. And where does he live? A. San Francisco.

Q. Bringing you down to April of the year 1908 what position, if any, did you occupy with that concern in this city? A. I was manager.

Q. Has that concern a permanent place of business here? A. It has.

Q. And has had for what length of time?

A. About ten years and a half.

Q. Bringing you down to that date, first of April, 1908, what was your salary?

A. The first of April, 1908, I was getting three hundred and thirty-three dollars and a third a month.

Q. Were you receiving any additional sums or permitted a drawing account by way of extra allowance?

A. Yes, sir.

Q. What did that extra drawing account amount to per month? A. \$83.44 per month.

Q. And how long was that drawing account to extend?

A. Over a period of five years from the first of April, 1908.

Q. Thence forward? A. Yes, sir.

Q. How were you to be allowed to draw upon that account?

A. The understanding at the time that agreement was made was that I was to get—

Mr. ALLEN.—I object to his stating the understanding. He may state [627—575] if he has any instructions.

Mr. SCHLESINGER.—Mr. Goldberg, I will again



(Testimony of Emar Goldberg.)

have to caution you that you must keep within the technical requirements of the law, although a defendant, so don't give the understanding; just state the arrangement.

Mr. ALLEN.—With whom?

Mr. SCHLESINGER.—What arrangements he had.

Mr. ALLEN.—I object as incompetent, immaterial and irrelevant, unless he states that there is some contract, something of that sort that defines his right.

Mr. SCHLESINGER.—I think under cross-examination you are entitled to develop it.

The COURT.—He can answer. I think it is perfectly proper to explain that account, since you have put it in evidence.

Mr. SCHLESINGER.—Will you kindly proceed, Mr. Goldberg, please?

A. I was to draw \$84.33 per month for a period of five years, but owing to the fact that at that time I was involved in the lumber business, Mr. Alper agreed to let me draw it in any amount that I desired for my own use, but at any time that I had drawn the entire five thousand dollars I was not to draw any more money for the balance of the five years on that particular account.

Q. And did you, as a matter of fact, draw various amounts from that fund?

A. I drew various amounts.

Q. Just state generally what amounts you drew from that fund for the four years succeeding April, 1908.

(Testimony of Emar Goldberg.)

A. I drew amounts from comparatively small amounts, from ten to twenty-five dollars up to six hundred.

Q. You have examined, have you not, Mr. Goldberg, an account which has been called a bonus of bribe account? A. Yes, sir. [628—576]

Q. And does that account correctly state the amount of your withdrawal and the times of your withdrawal?

A. It states it absolutely correct, sir.

Q. Do you know from whom they obtained that statement?

A. They obtained that statement from the office of the Great Western Smelting & Refining Company when I was there.

Q. Do you recall how much you had drawn on that account up to 1912?

A. The account was closed at the latter part of 1912, or the first part of 1913. It was still alive sometime last year. I think it was closed at the first part of this year or latter part of last year.

Q. Were you required to account for the uses to which you had put those funds?

A. No more so than any other part of my salary.

Q. In other words, to make this matter plain, you were allowed to draw, as an extra sum, a trifle less than \$3.00 per day? A. Yes, sir.

Q. With whom did you have that arrangement?

A. With Mr. Alper.

Q. Personally? A. Yes, sir.

Q. Prior to 1908, to the transaction here com-

(Testimony of Emar Goldberg.)

plained of, prior to the allowance of this bonus fund, were you receiving commissions in addition to your salary?     A. Yes, sir.

Q. And when were those commissions cut off?

A. On the first of April, 1908.

Q. And what was substituted in lieu thereof?

A. That bonus for the following five years.

Q. You have seen in this courtroom a large number of books and accounts belonging to the Great Western Smelting & Refining [629—577] Company. Did you ever have those books and accounts in your possession?

A. They are the books of the Great Western Smelting and Refining Company, and came from the office of the Great Western Smelting and Refining Company.

Q. And were they ultimately given up by you to the Government?     A. Yes, sir.

Q. Have you ever changed or modified a single word in any of those books intentionally?

A. No, sir.

Q. Have you ever concealed them, or any of them?

A. No, sir.

Q. From the Government officials?     A. No, sir.

Q. Do you know Mr. House, Government Expert Accountant?     A. Yes, sir.

Q. Did he ever examine those books in your concern?     A. Yes, sir.

Q. At your concern?

A. He spent considerable time down at the Great Western office going over those books.



(Testimony of Emar Goldberg.)

Q. That was before the matter was presented to the Federal Grand Jury? A. Yes, sir.

Q. Did you aid him in every possible way?

A. He was at liberty to look at any books, files, folder or anything that he desired at the office of the firm.

Q. Did you hide or conceal from him any books or documents? A. No, sir.

Q. Did you aid him in every possible way in his investigations? A. Yes, sir. [630—578]

Q. How long have the Government officials had in their possession these various books and documents?

A. For over two years and a half, since some time in May, 1911.

Q. Have you, Mr. Goldberg, had access to these books and documents in the interim?

A. I went up to Mr. House's room there once and looked at a single item.

Q. Mr. Goldberg, during the latter part of the year 1907, did the Great Western Smelting and Refining Company, at its branch in the city of Seattle, receive any call for a considerable amount of boiler zinc? A. Yes, sir.

Q. Do you recall the size and thickness required by the call?

A. I don't recall the size and thickness, because they called for various sizes and thicknesses.

Q. Now, during the latter part of the year 1907, not referring to this present transaction, but to the one immediately prior thereto, did you deliver any zinc, the Great Western Smelting and Refining

(Testimony of Emar Goldberg.)

Company deliver any zinc, to the Government through its branch?     A. Yes, sir.

Q. From whom did you get that particular lot of zinc?

A. From the Matheson and Heggler Zinc Company at La Salle, Illinois.

Q. The Great Western Smelting and Refining Company had been dealing with that concern for a long time, had it not?

A. Oh, for two or three years.

Q. Two or three years. Buying large quantities of material?     A. Yes.

Q. In quarter carload lots, half carload lots and full carload lots?     A. Yes, sir. [631—579]

Q. And up to the time of the filing of this indictment, was there any question raised by the Government as to the validity of this particular transaction?     A. No, sir.

Q. That zinc was delivered, was it?

A. Which particular zinc?

Q. I am referring to the one prior to this main transaction.     A. Oh, yes.

Q. And the bill paid?     A. Yes, sir.

Q. At or about that time, Mr. Goldberg, did you, as a citizen of Seattle, and as the manager of this branch concern, have any knowledge of the expected entrance to this port of the fleet?

A. Certainly; exeryone had that knowledge.

Mr. ALLEN.—What time?

Mr. SCHLESINGER.—Latter part of 1907.

Q. How did you receive that knowledge?

(Testimony of Emar Goldberg.)

A. Well, it was in the newspapers in the early part of 1908, and about in February and March, 1908, the papers were talking about it a great deal.

Q. Do you read the papers, Mr. Goldberg?

A. Yes, sir.

Q. And was this a matter of common notoriety, a matter of common knowledge?

A. Certainly, everyone knew it.

Q. Now, at or about that time, did you see Mr. Alper? A. Yes, sir.

Mr. ALLEN.—What time?

Mr. SCHLESINGER.—In April, 1908. I am going to fix the date.

Q. When did you see Mr. Alper?

A. In the last week in March or the first few days in April, 1908.

Q. And where, please, did you see him? [632—580] A. Right here in Seattle.

Q. Did you send for him? A. No, sir.

Q. Did you at that time and place have any conversation with Mr. Alper with respect to the purchase by the Great Western Smelting and Refining Company of any zinc? A. Yes, sir.

Q. When the Great Western Smelting and Refining Company made a purchase of this first lot of zinc from the M. & H. Company, which means the Matheson and Heggler Company, did the Great Western Smelting and Refining Company have an option to purchase another car of zinc at the same price within 30 or 60 days' time? A. Yes, sir.

Q. Did you, in the month of April, 1908, have a



(Testimony of Emar Goldberg.)

discussion with Mr. Alper with respect to that zinc transaction?

A. I talked that matter over with Mr. Alper when he was here.

Q. What is it that he said to you upon that occasion?

A. He told me that the price of zinc was low at the time and that—

The COURT.—You ask now what that conversation was?

Mr. SCHLESINGER.—What Mr. Alper said to him.

The COURT.—I don't care for that, but what did he do after he saw Mr. Alper and had this conversation.

Mr. SCHLESINGER.—I want to simply show this jury, as a part of this transaction, exactly what occurred, what instructions he carried out and those instructions were legitimate to negative any criminal intent.

Mr. SCHLESINGER.—You did see Mr. Alper, did you?

A. Yes, sir.

Q. Now, will you please state whether or not you had any discussion with Mr. Alper as to the advisability of taking up this option [633—581] on this second carload of zinc?

A. Mr. Alper directed—

The COURT.—Answer that yes or no.

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Now, will you please state what that conversation was.

Mr. ALLEN.—We object, your Honor, for the same reason. The Government can't be found here by what this witness states what might have been said to him by one of many, many people. The question we are concerned in is what this man did. If Mr. Alper did anything let him state that.

Mr. SCHLESINGER.—Well, what a man did must be determined in the light of surrounding circumstances. Whether we acted in good faith or whether we acted as a common thief, that is what this jury want to know.

The COURT.—As I stated a moment ago, let him state what he did now, and we will determine later—I don't want to get a lot of conversation—

Mr. SCHLESINGER.—Your Honor, we want to show he acted under instructions, that what he did was under instructions.

The COURT.—I have stated what I thought. You may proceed. He has stated that he had a conversation. Now let him proceed.

Mr. SCHLESINGER.—I understand he may explain it later on by way of supplement?

The COURT.—Certainly.

Q. After this conversation with Mr. Alper, what did you then do?

A. I was directed to purchase this carload of zinc but did not buy it immediately. I can't very well explain that unless I explain what Mr. Alper told me to do.

(Testimony of Emar Goldberg.)

A. Mr. Alper told me—

Mr. ALLEN.—I again renew my objection to his stating his conversation. It wouldn't relieve this man of any criminal responsibility. [634—582]

The COURT.—At this time I think he could state what he done without reciting the conversation.

Mr. SCHLESINGER.—Q. Well, what did you do?

A. I did not buy any carload of zinc immediately. I waited until such time—

Q. Please speak slowly to give Mr. Allen a chance to get it. What did the Great Western Smelting and Refining Company untimately do through you in the matter of taking up that option?

A. The option was taken up. The moment that the Navy Department asked for a price on some zinc. On the same day that the Navy Department asked for a price on some zinc a wire was sent to the Matheson & Heggler people ordering this car on which the firm had an option. That was as per my instructions from Mr. Alper.

Q. Did you, in this discussion—don't say what was said—did you in this discussion with Mr. Alper discuss with him or he with you the probability of this fleet requiring zinc boilers? A. Yes, sir—

Q. Don't state the conversation.

Mr. SCHLESINGER.—Q. Did you also discuss with Mr. Alper the probability or possibility of the Government not taking this second car of zinc?

A. Yes, sir.

Q. And what did you conclude in that regard?



(Testimony of Emar Goldberg.)

Mr. ALLEN.—Just a moment. Now, I object to his conclusions.

Mr. SCHLESINGER.—I want to know what actuated him; what he was thinking about, what he was doing, to put all of this matter before these 12 men. I submit, if your Honor please, in a conspiracy case, the widest possible latitude is allowed not only to the defendant, but also to the Government and your Honor has, in conformity with that rule, given the Government extreme [635—583] latitude.

The COURT.—The inquiry now is, what did he conclude?

Mr. SCHLESINGER.—What did he do?

The COURT.—Well, he may say what he did.

Q. Did you discuss with Mr. Alper as to what would happen in the event of the Government not taking that zinc? A. Didn't make any difference.

The COURT.—He can answer that yes or no.

Q. Answer that yes or no. A. Yes, sir.

Q. What was the substance of that talk?

Mr. SCHLESINGER.—Did you discuss with Mr. Alper the probability or possibility of the Government taking this second car of zinc?

A. Yes, sir, that matter was discussed.

Q. What did he say to you in that respect?

A. He said that it would not make any difference if the Government took it or not, because the price of zinc at that time was low and if the Government didn't take it it was good stock, and easy to sell; the firm could afford to carry it.

Q. What did you say, if anything, about the price

(Testimony of Emar Goldberg.)

at which zinc could be procured under the then existing conditions?

A. We had an option with the previous price, which was very low. Mr. Alper wanted the car immediately but I did not want to order the car immediately. At least, I didn't think it would be a good idea, I told him, to order the car immediately, because if the Government, or the Navy Department, did want some zinc they might want sizes that we might not buy, and for that reason, in place of ordering it right away, as Mr. Alper wanted me to do, we decided to wait and see if the Government wanted some zinc and then we would order what they wanted and if they did not [636—584] want it we would order a straight carload and exercise the option.

Q. Was that second car covered by this option?

A. Yes, sir.

Q. And the price had already been fixed?

A. Yes, sir.

Mr. SCHLESINGER.—Well, was anything said as to your proposal to sell that second car to the Government?

A. Yes, sir.

Q. What was that?

Mr. ALLEN.—My objection goes to this same matter.

The COURT.—Yes.

A. Well, Mr. Alper said it didn't make any difference if we did sell or didn't sell that car to the Government because it was bought at such a low price we couldn't possibly lose any money on it even if we

(Testimony of Emar Goldberg.)

carried it in stock.

Q. Was anything said by Mr. Alper as to the asking price of the Government for that second car?

A. Yes.

Q. What was said by him in that regard?

A. Mr. Alper asked me who was carrying zinc in town, how much of it was, how much we had been charging for zinc, and then instructed me that he wanted us to ask 12½ cents a pound for this zinc, because as long as we had an option on the zinc no one else would be in a position to supply this zinc, and therefore, we could either get a good price for it or not get the order at all, and it didn't make any difference if we didn't get the order because the zinc would be worth that money.

Q. Did you regard that as good or poor stock?

A. Oh, it was good stock; there is no question about that.

Q. Did he or not direct you to put in your bid at that figure? [636½—585]

A. He directed me to put in the bid at 12½ cents if the Government asked for any zinc.

Q. Did you at that time have any discussion with him concerning a man named Kettlewell of the navy pay office? A. Yes, sir.

Q. What, if anything, did you tell him?

A. I told him that Mr. Kettlewell, who was at that time principal clerk of the office, had borrowed some money from me and was continually worrying me and nagging the life out of me, wanting more money, and he told me that under the circumstances, if we



(Testimony of Emar Goldberg.)

were going to bid on any zinc, if the Government was going to require any zinc, the best thing to do would be to bid in another name so he wouldn't know the Great Western Smelting and Refining Company had secured the business, and, therefore, think that he had a hold on the firm for some reason or other; and he suggested bidding in the name of the Fowler Company, which, of course, at that time belonged to the Great Western Smelting & Refining Company. He told me when he went back to San Francisco, which was in a few days, he would tell Mr. Fowler about it and if Mr. Fowler objected and he didn't think there was any occasion for his objecting to it, he would let me know. Of course, he never said anything more about it. Naturally I presumed he told Mr. Fowler about that and it was satisfactory.

Mr. ALLEN.—Don't tell what you presumed.

Mr. SCHLESINGER.—Did you at that time have any interests of any kind or character in the Fowler Metal Company?

A. Personally, no, sir.

Q. Well, did you have impersonally?

A. No, sir.

Q. What did you tell him, if anything, with respect to the consultation [637—586] with Mr. Kerr?

Mr. ALLEN.—I renew, again, your Honor, my objection on the ground—

Mr. SCHLESINGER.—I thought it was understood it was to go in subject to your objection.

Mr. ALLEN.—If the Court so understands it, and

(Testimony of Emar Goldberg.)

wants me to pursue that, I will.

The COURT.—You may make your objection.

Mr. ALLEN.—I object to it on the ground it is immaterial, irrelevant and incompetent. They can easily produce here probably a dozen or fifty men that walked through this man's office and told him to buy or not buy zinc.

The COURT.—You may have views on this. The weight of this other matter is for the jury, but I don't mean by that that anything and everything should be—

Mr. SCHLESINGER.—Oh, no, we don't want that.

The COURT.—The concise statement of just what he did.

Mr. SCHLESINGER.—What occurred, what he acted on.

(Jury recalled.)

Mr. SCHLESINGER.—Did you take up with Mr. Alper the matter of the application of Kettlewell?

A. Yes, sir.

Q. And what did he say to you?

A. In regard to bids that were put in or in regard to any other matter?

Q. No, in regard to the loans.

A. I told him this, or at least he suggested that the course that Mr. Kerr had suggested previous to his arriving in Seattle was satisfactory, and then he said, "Now, Goldberg, if you go up there and tell his superior officer that he borrowed money from [638—587] you, or keeping on borrowing money from

(Testimony of Emar Goldberg.)

you, the men won't believe you; he is a Government employee and it is your word against him, and they won't believe you; the best thing is for you not to loan him any more money and try to get back what you loaned him and don't loan him any more."

Q. Did you subsequently confer with Mr. Kerr about the importunities of this man Kettlewell?

A. I don't remember definitely whether I went to Mr. Kerr again about that or not.

Q. Did you go to him at any time about it?

A. I went to him before Mr. Alper came to Seattle, I went to him.

Q. And what did you say to Mr. Kerr?

A. Before Mr. Alper came to Seattle I went up to see Mr. Kerr and told him the circumstances, and he told me to report him to his superior officer, and then I told him that Mr. Alper was coming up here in a few days. Then Mr. Kerr says, "If Mr. Alper is going to be here in a few days what do you think about waiting until he comes here"? I told him I thought the best thing to do would be to wait until Mr. Alper came to Seattle, because I didn't want to do a thing like this without Mr. Alper's permission, that is, the head of the firm on this coast.

Q. Did you receive any blank proposal for the purpose of bidding on this zinc?      A. Yes, sir.

Q. Did you go to the navy pay office for that purpose?      A. Yes, sir.

Q. What occurred in the Navy Pay Office?

A. Someone in the Navy Pay Office telephoned to us on the morning of the 11th that there was a pro-



(Testimony of Emar Goldberg.)

posal for 50,000 pounds of zinc plate. So I went up there to get this proposal, and Mr. Kettlewell was there at the time, and he asked me how much we [639—588] were going to bid for the zinc. And this was a matter, the very subject Mr. Alper had brought up when he was in Seattle. He said to me at the time, "Now," he says, "if this man Kettlewell has charge of these bids," which he naturally would have charge of, "why," he says, "if he asks you what you are going to charge for the zinc try and let him know you are going to bid about thirteen cents for the zinc and then put in your bid at twelve and a half."

Q. Did you see Mr. Corder with respect to putting in the bid at that figure? A. Yes, sir.

Q. And what did you say to Mr. Corder and what did he say to you in that respect?

A. I told Mr. Corder that Mr. Alper instructed the Great Western Smelting & Refining Company to bid \$12.50 on the zinc. Mr. Corder agreed to it.

Q. Had you any prior business transactions with the Corder Company? A. Oh, yes.

Q. Did you or not do business with Mr. Corder in the matter of buying and selling zinc to merchants generally? A. Yes, sir.

Q. About how many merchants or persons in trade had the Corder Company and the Great Western Smelting & Refining Company sold zinc to? Just roughly estimate it.

A. Thirty or forty or fifty. The Corder Company sold practically all the zinc, really jobbed it and

(Testimony of Emar Goldberg.)

retailed it, and the profits were always divided on his zinc between the Great Western Smelting & Refining Company and the Corder Company before the Government had bought any zinc at all.

Q. In other words, you did not enter into any arrangement with Corder for the sole purpose of selling supplies to the Government? [640—589]

A. No, sir.

Q. Directing your attention to the latter part of 1907, after you had sold some zinc and materials to the Government, were you at or about that time approached by Mr. Kettlewell with respect to any particular loan? A. Yes, sir.

Q. Please tell these gentlemen just what occurred in that regard.

A. In the month of December, 1907, Mr. Kettlewell asked me to come up to the pay office for some proposal of some kind, and when I was up there he asked me to loan him a thousand dollars. He told me that he would give me a second mortgage on some piece of property out on Capitol Hill, but I told him at the time that I was involved in the lumber business, that all the money I had was in the lumber business, and I am under the impression I even owed money to the bank at the time, and there was no way of my raising money. He suggested raising it from the bank and he suggested my getting it from the Great Western Smelting & Refining Company. But I told him that I had no authority of any kind whatsoever to take a thousand dollars, or any sums, from the Great Western Smelting & Refining Company

(Testimony of Emar Goldberg.)

and loan it to anybody else.

Q. Now, that was in the—

A. In the month of December.

Q. In the latter part of 1907, was it?

A. Yes, sir.

Q. And did you, subsequent to that time, have any business with the Government? A. Oh, yes.

Q. Did you see a letter which was read here the other day written by Mr. Kettlewell?

A. Yes, sir. [641—590]

Q. And was this conversation that you had with Kettlewell prior to this time? A. Yes, sir.

Mr. ALLEN.—Will you identify that particular letter which you have in mind so I will know what you are talking about?

Mr. SCHLESINGER.—Don't you know that letter of January—that letter is dated January 11th, is it not?

A. I think it was read here "January 11th."

Q. It is the one that you put in, Mr. Allen?

Mr. ALLEN.—I want to identify it, that is all.

Mr. SCHLESINGER.—Had you at that time loaned Kettlewell any money?

A. No, sir, I had not loaned him a cent up to that time.

Q. Did Mr. Kettlewell ever call at your house for money? A. Yes, sir.

Q. How many times, if you can now remember?

A. Just once that I remember he called at my house.

Q. Did he ever telephone you?



(Testimony of Emar Goldberg.)

A. Oh, he telephoned to me, and telephoned to my house and telephoned to the office.

Q. Did you give him any money at your home?

A. No, sir.

Q. What did he say he needed money for?

A. The first thousand dollars that he wanted, said he was figuring on some kind of a land deal; and after that, when he asked me for money again in the month of January, he told me that his mother was sick—well, he told all kinds of stories at different times. He was always asking me for money.

Q. Now, Mr. Goldberg, without going into all of these various details, mention to these twelve men, if you can, how many times Kettlewell approached you for money? [642—591]

A. I don't know how many times he approached me. After he had borrowed some money from me he tried afterwards, a number of times, to get more money, but, on the advice of Mr. Alper, all the money I loaned him was before Mr. Alper came to Seattle that time, and after that I never loaned him any more money. All I tried to get was to get the money back I loaned him.

Q. What was the highest amount he suggested and the lowest amount?

A. He suggested a thousand dollars was the highest amount and fifty dollars was the lowest amount.

Q. Did Mr. Kettlewell at any time say anything to you in the nature of threat upon your declining to give him this one thousand dollars?

A. The first time that he asked me for this thou-

(Testimony of Emar Goldberg.)

sand dollars, when I told him, showed him that I couldn't give it to him, he told me if I didn't show him that little accommodation, as he put it, he would see the Great Western Smelting & Refining Company didn't do any more business with the Navy Department. I told him that I couldn't help that, that I didn't have the money and couldn't get it for him.

Q. Did he, in that same conversation, say that they were doing more business than they were entitled to anyhow, or words to that effect?

A. He said that the Great Western Smelting & Refining Company were getting more business than they were entitled to get at the navy yard at the present time; that is the remark that he made, the Great Western Smelting & Refining Company are getting more business than they are entitled to get at the navy yard at the present time.

Q. Will you let me have the letter of January 11th, please, Mr. House? Did he, in that conversation, talk with you about his relations with other concerns doing business with that navy yard? [643—592]

A. The remark he made was, that other people were treating him right and he expected the Great Western Smelting & Refining Company to treat him right. My answer to that was, I didn't know what he meant by other people treating him right, but the Great Western Smelting & Refining Company, as far as I was concerned, couldn't give away any money, and I didn't have any authority to do it.